

Sh. Ram Singh Vs the Presiding Officer, Labour Court

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Court : Delhi

Decided On : Jun-03-2010

Judge : Mr. Rajiv Sahai EndLaw. J.

Acts : D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952 - Clause 15(2)(vi)

Appeal No. : WP(C) No.4468/1997

Appellant : Sh. Ram Singh

Respondent : The Presiding Officer, Labour Court

Advocate for Def. : Mr. Anand Nandan, Adv.

Advocate for Pet/Ap. : Mr. Anuj Aggarwal, Adv.

Judgement :

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported No in the Digest?

ORDER

1. The petitioner workman by this writ petition impugned the award dated 22nd January, 1997 of the Labour Court holding the removal by the respondent no.2

DTC of the petitioner workman from service as illegal and unjustified but granting relief of lump sum compensation of Rs.50,000/- only to the petitioner workman in lieu of reinstatement and back wages. It is the plea of the petitioner workman that the Labour Court having found his removal from service to be bad, the relief of reinstatement with back wages ought to have followed and the relief granted of compensation of Rs.50,000/- only is illusory and not even adequate compensation in lieu of the relief of reinstatement and / or back wages.

2. Rule was issued in the writ petition on 7th July, 2000. The petitioner workman died on 23rd September, 2002 leaving behind four children only as his legal heirs and of whom two are informed to be still minor. The said legal heirs of the petitioner workman were substituted in his place and allowed to pursue the petition.

3. The petitioner workman was employed as a Driver with the respondent DTC since the year 1982. The services of the petitioner workman were terminated vide order dated 8th March, 1988 under Clause 15(2)(vi) of the D.R.T.A. (Conditions of Appointment & Service) Regulations, 1952. The cause of termination was that the petitioner workman had remained on unauthorized leave from 1st May, 1986 to 31st March, 1987 and for which charge-sheet dated 21st May, 1987 was served on him. It was the case of the petitioner workman in the said inquiry proceedings that he could not attend duties due to unavoidable circumstances beyond his control. It was stated that during the said time his two year old son had developed blindness and required immediate attention and his wife was also of unstable mind and in fact ultimately committed suicide on 12th May, 1987. The petitioner workman thus contended that he could not be held guilty of misconduct under para 19(h)&(m) of the standing orders issued under Clause 15(1) of the aforesaid Regulations. The inquiry officer nevertheless found the petitioner workman guilty of misconduct and the Disciplinary Authority of the respondent DTC meted out the punishment of discharge from service.

4. Upon an industrial dispute being raised by the petitioner workman, the Labour Court found that the respondent DTC had failed to prove that the grounds given by the petitioner workman were false. It was also found that the petitioner workman

was not represented by any assistant during the inquiry. The inquiry officer was also not found to have returned any finding on the justification of the petitioner workman for his absence. It was further held that the admission by the petitioner workman of his absence was no admission of habitual absence or habitual negligence of duties or of lack of interest in the respondents work and which under the aforesaid Regulations of DTC was a misconduct punishable with removal from service. It was held that the Disciplinary Authority was not right in meeting out the punishment of removal / dismissal from service.

5. Even though the said finding of the Labour Court is against the respondent DTC but the respondent DTC has chosen not to challenge the same and allowed it to attain finality. Though a counter affidavit to this writ petition has been filed but even therein no challenge to the award or any aspect of it has been made. The counsel for the respondent DTC of course has urged that subsequent to the award aforesaid, the Supreme Court in DTC v. Sardar Singh 2004 (7) SCC 574 has held that when an employee of DTC absents from duty without sanctioned leave, it prima facie shows lack of interest in work and habitual absence is a factor which establishes lack of interest in work. Reliance in this regard is also placed on judgment dated 25th May, 2007 of the Division Bench of this Court in LPA No.2290/2006 titled Dharam Pal v. DTC which follows the judgment in Sardar Singh.

6. The counsel for the petitioner in support of the proposition that upon finding of termination of services being illegal, the relief of reinstatement must follow, relies on the recent judgment of the Supreme Court in Harjinder Singh v. Punjab State Warehousing Corporation MANU/SC/0060/2010. However in view of the demise of the petitioner, the question of reinstatement does not arise. The counsel for the petitioner however contends that full back wages ought to have been awarded. Reliance in this regard is placed on Nicks (India) Tools v. Ram Surat AIR 2004 SC 4348, Surendra Kumar Verma v. CGIT (1980) 4 SCC 443 and on Novartis India Ltd. v. State of West Bengal 2009-II-LLJ-9 (SC).

7. On inquiry as to what should be the quantum of compensation in lieu of reinstatement and/or reinstatement and back wages, the counsel for the petitioner

invites attention to (i) Management of Aurofood Pvt. Ltd. v. S. Rajulu (2008) II LLJ 1061 SC where compensation of Rs.10 lacs in lieu of reinstatement was granted; (ii) Rajasthan Lalit Kala Academy v. Radhey Shyam (2008) III LLJ 562 SC where compensation of Rs.3 lacs in lieu of reinstatement and back wages was granted and (iii) Talwara Coop. Credit & Service Society Ltd. v. Sushil Kumar (2009) I LLJ 326 SC where compensation of Rs.2 lacs in lieu of reinstatement and back wages was granted.

8. However in none of the aforesaid judgments is found any basis or formula on which the such compensation is to be ascertained. In Management of Aurofood Pvt. Ltd. (supra) the management had of its own offered a lump sum compensation of Rs.5 lacs which was not acceptable to the workman and which the Supreme Court enhanced to Rs.10 lacs. While awarding compensation of Rs.2 lacs in Talwara Coop. Credit & Service Society Ltd. (supra) the factors of the workman having not worked and the management being a sick unit and not having the capacity to pay were taken into consideration.

9. During the course of the hearing, it was also enquired as to whether the compensation awarded by the Labour Court of Rs.50,000/- had been paid. Though neither counsel had information in this regard but the counsel for the respondent no.2 DTC has placed before this Court the minutes of the Mediation Committee of the DTC of December, 2008 and November, 2009. In the minutes of December, 2008, the said Committee sanctioned resolution of dispute with the petitioner by reinstating the petitioner subject to his not being paid any back wages from the date of termination and till the date of reinstatement and subject to his refunding with interest the gratuity and the management's share of C.P. Fund received by the petitioner. However, subsequently on being informed that the petitioner had already died, in the minutes of November, 2009 the Committee provided for complying with the award by payment of Rs.50,000/- to the legal heirs of the petitioner. From the same it transpires that the said sum of Rs.50,000/- also has not been paid till now.

10. The sum of Rs.50,000/- awarded 13 years back on 22nd January, 1997 and which has not been paid till date, itself, even if deposited in Government securities,

would have a value of over Rs.2 lacs today.

11. In my opinion compensation in lieu of back wages and reinstatement should represent the saving that accrues to the employer/management by not having to pay the back wages and not having to reinstate the workman. The award was made after 10 years of termination of services of the petitioner workman. There was no evidence of the petitioner workman being employed elsewhere. If the award had been for reinstatement with back wages, the respondent no.2 DTC would have been liable to pay back wages for full 10 years during which the dispute remained pending and would also have been liable to pay the future emoluments to the petitioner from the award in 1997 till his demise in 2002. In the interregnum the scheme of family pension had also come into force in the respondent no.2 DTC and the respondent no.2 DTC on demise of the petitioner would have become liable to pay pension also. Considering all the said factors, it is deemed expedient to enhance the lump sum compensation from the present date value as aforesaid of Rs.2 lacs to Rs.4 lacs.

12. However since two of the legal representatives of the petitioner are stated to be minors, it is not deemed expedient to direct release of the entire amount to them immediately. It is deemed expedient to entail the services of the Delhi Legal Services Authority which shall, after meeting the children of the deceased petitioner and assessing their needs and requirements, make suitable provision for release/payment/investment of the said amounts.

13. The writ petition accordingly succeeds and the Rule issued earlier is made absolute. The lump sum compensation awarded by the Labour Court in lieu of reinstatement and back wages is enhanced to Rs.4 lacs as aforesaid. The respondent no.2 DTC is directed to deposit the said sum of Rs.4 lacs with the Delhi Legal Services Authority within eight weeks of today failing which the same shall also incur simple interest at 9% per annum. The legal representatives of the deceased petitioner to thereafter approach the Delhi Legal Services Authority for release/payment/investment of the amount in terms of the aforesaid. The legal representatives of the petitioner are also awarded costs of this writ petition of Rs.15,000/- payable along with the amount aforesaid.

The writ petition is disposed of.

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