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Ramjas Foundation Vs. Asha Gaba

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Court : Delhi

Decided On : Jul-15-2013

Judge : Vipin Sanghi

Appellant : Ramjas Foundation

Respondent : Asha Gaba

Judgement :

A$~40. * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on: Judgment delivered on: % + 21.05.2013 15.07.2013 W.P.(C.) No. 883/2010 (Arising out of award dated 24.10.2009 in ID No.06/2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus DHEER SINGH Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6499/2010 (Arising out of award dated 21.05.2010 in ID No.1292/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus SATYA PRAKASH SHARMA ..... Respondent Through: Mr. Sanjoy Ghose, Advocate. W.P.(C) 6501/2010 (Arising out of award dated 21.05.2010 in ID No.10/2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus SUNITA SHARMA Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6514/2010 (Arising out of award dated 21.05.2010 in ID No.1293/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus NARAYAN JHA Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C)-3039/2010 (Arising out of award dated 24.10.2009 in ID No.1298/2004) RAMJAS FOUNDATION Through:

.... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus BALRAJ Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 3041/2010 (Arising out of award dated 30.10.2009 in ID No.1300/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus PRAVEEN KUMAR GUPTA ..... Respondent Through: Mr. Sanjoy Ghose, Advocate. W.P.(C) 3043/2010 (Arising out of award dated 31.10.2009 in ID No.14/2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus ASHA GABA Through: ..... Respondent Mr. Sanjoy Ghose, Advocate W.P.(C) 5412/2010 (Arising out of award dated 31.10.2009 in ID No.11/2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus KUSUM NIGAM Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C)-5413/2010 (Arising out of award dated 24.10.2009 in ID No.255 /2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus TARA CHAND Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6500/2010 (Arising out of award dated 21.05.2010 in ID No.06 /2005) RAMJAS FOUNDATION Through: W.P.(C)883/2010 .... Petitioner versus HEMCHAND GOEL Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6502/2010 (Arising out of award dated 21.05.2010 in ID No.178/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus HIM KUMAR MITTAL Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6510/2010 (Arising out of award dated 21.05.2010 in ID No.1296/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus MAN SINGH Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6511/2010 (Arising out of award dated 21.05.2010 in ID No.03/2005) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus DHARAM PAL Through: W.P.(C)883/2010 ..... Respondent W.P.(C) 6512/2010 (Arising out of award dated 21.05.2010 in ID No.709/2004) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus D LATHA Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C)-6513/2010 (Arising out of award dated 21.05.2010 in ID No.1294/2012) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus M.K. BHARGAV Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. W.P.(C) 6515/2010 (Arising out of

award dated 21.05.2010 in ID No.81 /2008) RAMJAS FOUNDATION Through: .... Petitioner Mr. Sudhendhu P Gautam, Advocate. versus NARENDER KUMAR Through: ..... Respondent Mr. Sanjoy Ghose, Advocate. CORAM: HONBLE MR. JUSTICE VIPIN SANGHI JUDGMENT VIPIN SANGHI, J.

1. The present set of writ petitions have been preferred by the petitioner, Ramjas Foundation to assail the similar awards passed by Labour Courts, wherein the retrenchment of the respondent workmen have been held to be void ab initio, and reinstatement has been granted in earlier cases with continuity of services and consequential benefits along with simple interest at the rate of 6% per annum. In cases where the Workmen attained the age of superannuation during the pendency of the industrial dispute, instead of reinstatement, they have been granted full back wages till the date of superannuation and pension thereafter, along with interest, as aforesaid. Since the material facts in all these cases are the same, the petitioner is the same and the same issues have been raised in all these cases, they have been taken up for disposal simultaneously. Ld counsels have also advanced common arguments in these cases.

2. The petitioners case is that the petitioner society owned a vast tract of land measuring about 1600 bighas in village Chowkri Mubarikabad and Village Sadhora Khurd, New Delhi .The structures built thereon were given to various persons on lease and license basis. The Petitioner employed several office and field staff for realisation of rent of these properties, for keeping their records and accounts, and other allied work. Around 19992000 the said tract of land was acquired by Delhi Development Authority (D.D.A) which compelled the Petitioner to dispense with the services of 78 workmen, including the Respondent workmen, and which was done in compliance with Section 25 F of the Industrial Disputes Act,1947(Act).

3. Based on the evidence adduced and arguments advanced by the parties, the labour courts held that the petitioner has violated Section 25F(a), Section 25F(b) of the Act and Rule77 of the Industrial Disputes (Central) Rules, 1957 (Rules) in as much, as, the House Rent Allowance (HRA)which forms a part of Wages as defined in Section 2(rr) of the Act, was not included in the computation of the retrenchment compensation, and neither any seniority list was prepared and

pasted by the Petitioner in compliance of Rule 77 of the Rules. Accordingly, the impugned awards were passed, as aforesaid.

4. At the outset it may be noted that Ld counsel for the petitioner admits the lapse of the petitioner in not taking into account the HRA while computing the retrenchment compensation and submits that it was a bona fide mistake on the part of the petitioner management.

5. The submission of Ld counsel for the petitioner is that the references made to the industrial adjudicators regarding termination were two fold. The industrial adjudicators had not only to decide whether the terminations of the workmen were illegal, but also to adjudicate if the same were unjustified, and then pass the awards accordingly. However, in the present cases, the labour courts had not gone into the aspect of justifiability of the retrenchment.

6. Secondly, Ld counsel for the petitioner submits that since the aforesaid land of the petitioner was acquired by DDA, it did not have an option but to retrench the 78 Workmen, who were earlier engaged in the work relating to management of the property acquired and taken over by DDA. The retrenchments were, therefore, justified.

7. Thirdly, Ld Counsel submits that the retrenched employees could not be absorbed into the other establishments belonging to the petitioner, as alleged by the workman, because the 19 other institutions running under the petitioner society are run by separate managing committees and their finances are also managed independent of each other. They are separate and independent establishments for all purposes. He submits that there is no functional integrity between them and with the petitioners establishment. These institutions are governed by the provisions of different Acts, like the Delhi School Education Act, 1973 (DSE Act) and the Rules framed thereunder. Section 8 of DSE Act prescribes the mode and manner of employment in schools. Therefore, it was not possible to absorb the retrenched workmen in the said institutions because these institutions - being mostly schools and colleges, do not carry out jobs of the nature that the workmen were doing while in the employment of the petitioner.

8. Ld counsel for the petitioner relies on the decision of the Supreme Court in Hindustan Steel Works Construction Ltd v Employees Union, (1995) 3 SCC 47.in this behalf where the issue was whether the units of the appellant company at Hyderabad were independent establishments, or were parts of the larger establishment of appellant company. The Supreme Court held that there being no functional integrity, and the fact that projects at different sites are wound up upon their completion, shows that each of the work sites was a different establishment, even though the jobs were transferrable from one location/site to the other and the administration control was at one location. Ld counsel for the petitioner submits that the case of the petitioner is squarely covered by this judgment and, therefore, it was the petitioners prerogative to decide, whether a particular employee can be transferred from one establishment to another, and the employees cannot seek absorption in the other independent establishments run by the same management as a matter of right.

9. Ld counsel for the petitioner also relies on Parry & Co Ltd v P.C Pal (1969) 2SCR 976.In this case, the appellant company was carrying on business at various places in India as merchants, selling agents, and manufacturers. Its business at Calcutta was twofold: (1) as selling agents of certain companies, and (2) of conducting an engineering workshop at Kidderpore. According to the company, its agency business began to decline from 1954 and it had, therefore, to retrench some of its employees in that year. The company, consequently, decided upon a policy of reorganisation of its business by giving accent to its manufacturing activities and of giving up the agencies held by it. This policy of the Company was challenged on the grounds of malafides and propriety, since it led to retrenchment of the employees engaged in the agency business. The workers union also claimed that the retrenched workmen be absorbed in the manufacturing establishment. The Supreme Court repulsed the said challenge in the following words:

14. It is well established that it is within the managerial discretion of an employer to organise and arrange his business in the manner he considers best. So long as that is done bona fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganisation results in surplusage of employees no employer is

expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however unfortunate it is. The Legislature realised this position and therefore provided by Section 25F compensation to soften the blow of hardship resulting from an employee being thrown out of employment through no fault of his. It is not the function of the Tribunal, therefore, to go into the question whether such a scheme is profitable or not and whether it should have been adopted by the employer... It is obvious that while reorganising its business it is not incumbent on the company to develop its manufacturing side at the very place where it has surrendered its agencies, namely, Calcutta, nor to do so at the very same time. These considerations which the Tribunal took into account were totally extraneous to the issue before it and the Tribunal ought not to have allowed its mind to be influenced by such considerations and thereby disabling itself from viewing the issue from proper perspective. It was also beyond its competence to go into the question of propriety of the company's decision to reorganise its business. Having come to the conclusion that the said policy was not actuated by any motive of victimisation or unfair labour practice and therefore was bona fide, any consideration as to its reasonableness or propriety was clearly extraneous. Therefore, its finding that the company had failed to establish that it was profitable was incompetent. It is for the employer to decide whether a particular policy in running his business will be profitable, economic or convenient and we know of no provision in the industrial law which confers any power on the tribunal to inquire into such a decision so long as it is not actuated by any consideration for victimisation or any such unfair labour practice. 15it is for the management to decide the strength of its labour force to carry out efficiently the working of its undertaking. If, as a result of reorganisation, the number of its existing employees exceeded the reasonable and legitimate needs of the undertaking the management, subject to its obligation to pay compensation, can effect retrenchment. So long as retren- chment carried out is bona fide and not vitiated by any consideration for victimisation or unfair labour practice and the employer comes to the conclusion that he can carry on his undertaking with reasonable efficiency with the number of employees retained by him after retrenchment, the Tribunal ought not ordinarily to interfere with such decision. ..

16. As regards the company's refusal to transfer the retrenched employees, the Tribunal's finding was clearly against law. The liability of an employee to be transferred and the right of the company to transfer him did not mean that there was a corresponding obligation on the company to transfer the employee to another branch.(emphasis supplied) As laid down in Workmen of Subong Tea Estate*, (1964)5SCR602 10. Consequently, Ld counsel for the petitioner submits that the award of reinstatement in service was not called for in the facts and circumstances of the case 11. The petitioner then relies on Shiv Kumar Sharma& Ors v State of Haryana& Ors, (1994) 4 SCC 445.The Supreme Court held that even where there was non-compliance of Section 25F of the Act in as much, as, the retrenchment notice was not duly sent to the workman, reinstatement would not be directed where the ground for retrenchment were found to be just and proper. The Supreme Court held:

7. The permission granted to retrench 21 appellant-workmen of the respondent management cannot, therefore, be said to be in accordance with law. As, however, permission for retrenchment was sought for on the grounds mentioned in para 23 of the aforesaid application which the Specified authority regarded as just and proper, we are of the view reinstatement would not be the proper order to be passed, and interest of justice would be met if, apart from what is due to each of the aforesaid workmen as retrenchment compensation visualised by Section 25F(b) of the Act, a sum of Rs. 10,000/- is paid to each of them. From the amount which would become so due, payment if any made towards retrenchment compensation shall be deducted; so also, if any further sum had been received by any of the aforesaid workmen.

12. The petitioner relies on District Red Cross Society v Babita Arora and Others, (2007) 7 SCC 366.The question which arose for consideration before the Supreme Court was whether the Respondent was entitled to protection under Section 25F and Section 25G of the Act, if the establishment in which she was working itself has been closed down-though certain other wings or units of the Appellant Society have not been closed down, and are still functioning. The Supreme Court in Para 16 held as under: ...if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with

other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act.

13. Ld counsel for the petitioner relies on a judgment of this court in Nehru Yuva Kendra Sangathan v Union of India & Ors, (2001) I LLJ 19.Del, which was a case of an ad-hoc workman who had barely worked for about 240 days. The Court held that it would not be appropriate to grant the relief of reinstatement with full back wages, merely because there was a technical flaw in not paying the compensation as per Section 25-F of the Act. Reliance is also placed on Madhya Pradesh Administrator V. Tribhuban (2007) 9 SCC 74.to submit that the judicial approach has undergone a change, and now reinstatement with back wages does not automatically follow upon the retrenchment being found to be illegal.

14. Ld counsel for the petitioner finally submits that the retrenchments were carried out in accordance with seniority- the junior most being retrenched first. Ld Counsel submits that the respondent workmen could not point out the breach of Section 25G, i.e., the retention of the junior workmen while retrenching the senior. He submits that though the procedural requirement of Rule 77 of the Rules may not have been complied with, in spirit there has been no breach of the rule of last come first go. The purpose of Rule 77- which obliges the employer to maintain and display the seniority list of the workmen who are likely to be retrenched, is only to enable the workmen to get information about who all are likely to be retrenched and how they stand in seniority. Ld counsel submits that there is no evidence to show that Rule 77 of the Rules has not been complied with, and it is also not stated as to what prejudice has been caused to the Respondents due to non compliance of Rule 77. The petitioner also submits that the labour courts are also silent on the compensation amount which has been already paid to the respondents and received by them.

15. On the other hand, Ld counsel for the respondents argues that State of Madhya Pradesh (supra) relied upon by the petitioner relates to public employment, whereas the present petitioner is a private establishment. He submits

that, consequently, there cannot be any justifiable grievance to the award of reinstatement, since, admittedly section 25F stood breached in the present case. He further submits that the industrial adjudicator having exercised his jurisdiction in favour of grant of reinstatement with continuity of service and back wages, it is not for this Court to interfere with the same, particularly when such exercise cannot be said to be perverse. Reliance is placed in this regard on Sudhoo v. Haji Lal Mohd. Bivi Works & Others, 1990 Lab. I.C 1538.Municipal Corporation of Delhi v. Ashar Ram & Anr., 2005 II AD (Delhi) 285 and Govt. of Andhra Pradesh & Others v. Mohd. Nasrullah Khan, (2006) 2 SCC 373.

16. Ld counsel for the respondents relies upon the affidavit of the respondent in WP(C) No. 883/2010, wherein he states: The management is registered under the Societies Act, 1860 which is running 17 different schools, one college and games and mountaineering institute in which more than 1000 employees are working. The management is having 500 factories and 3000 houses on its land from which the management is taking rent and the cases of which are pending in courts 17. Ld Counsel submits that this shows the vast magnitude of activities undertaken by the Petitioner. It is submitted that the operations of the Petitioner are fairly large and, therefore, as a fair employer the Petitioner could have transferred its employees to other units of the Petitioner's establishment in case of shutting down of one of its establishments.

18. Ld counsel for the respondent submits that it is only now that the petitioner has admitted before this court that there was a mistake in the calculation of the retrenchment compensation. But this was never admitted by the petitioner earlier. In fact, they have been contesting this for the last so many years. Till date, there has been no remedial action and the petitioner is simply indulging in delaying tactics in order to deny reinstatement to the respondents.

19. Respondents place reliance on the judgment of Supreme Court in Krishna Bahadur v M/S Purna Theatre and Ors AIR, 2004 SC 4282.wherein the Supreme Court held as under:

11. It is neither in doubt nor in dispute that the provision of Section 25F(b) is imperative in character. The provision postulates the fulfillment of the following

three conditions: (i) One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice; (ii) Payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months; and (iii) Notice to the appropriate Government in the prescribed manner.

12. The requirement to comply with the provision of Section 25F(b) has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio. (emphasis supplied) 20. Therefore, Ld counsel for the respondent submits that the aforesaid conditions are mandatorily required to be complied with before retrenchment of workman is given effect to, and in event of any contravention of the said mandatory requirements, the retrenchment would be void ab initio. He also relied on Anoop Sharma v Executive Engineer, Public Health, (2010) 5 SCC 497.wherein the Supreme Court held as under:

17. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity 18we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

20. In State Bank of India v. N. Sundara Money (supra), the Court emphasised that the workman cannot be retrenched without payment, at the time of retrenchment, compensation computed in terms of Section 25F(b).

21. The legal position has been beautifully summed up in Pramod Jha v. State of Bihar (supra) in the following words: . . . Payment or tender of compensation after the time when the retrenchment has taken effect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind it would result in nullifying the retrenchment.

22. If the workman is retrenched by an oral order or communication or he is simply asked not to come for duty, the employer will be required to lead tangible and substantive evidence to prove compliance of Clauses (a) and (b) of Section 25F of the Act.

21. Ld counsel for the respondents submits that in view of the above prin- ciples being laid down, the retrenchment of the workmen is void ab initio since the computation of retrenchment compensation was not in accordance with the law as admitted by the petitioner.

22. Ld counsel of the respondent relies on a single judge decision of the Bombay High Court in Vijendrasingh Ladusingh Shekhawat v Todi Industries Ltd and Anr, 2004 (4) Mh LJ 412.wherein it was held: In the present case, the admitted position is that the employer had not included the House Rent Allowance in computing the retrenchment compensation that was required to be paid under Section 25-F of the Industrial Disputes Act, 1947. Section 25-F, it is well settled, lays down a requirement which is mandatory. In the absence of compliance with the provisions thereof the order an retrenchment is void ab initio.

23. Ld counsel submits that the facts of the above case are exactly similar to the facts of the present cases. He relies on another judgement of the Supreme Court in Nar Singh Pal v Union of India, (2000) 3 SCC 588.where the Supreme Court held that: The Tribunal as also the High Court, both appear to have been moved by the fact that, the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. Thus, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs. 6,350/ was utilised by him to sustain himself. This does not

mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppels against the exercise of Fundamental Constitution.

24. Rights available under the In his rejoinder, learned counsel for the petitioner has pointed out that the averments made by the respondent in WP(C) No. 883/2010 in the counter affidavit is not accurate inasmuch, as, the alleged 500 factories and 3000 houses did not existed any more, as the said land stands acquired with structures thereon.

25. There can be no quarrel with the proposition that in exercise of the extraordinary writ jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the decision of a quasi judicial tribunal. Therefore, if more than one view is plausible, and the tribunal has adopted a particular plausible view in its discretion, this Court would not interfere with the exercise of such discretion only because this Court may prefer another plausible view. However, if the principle on which the view of the quasi judicial tribunal as founded is found to be erroneous, or where relevant factors have been ignored, or irrelevant factors taken into consideration, this Court would not hesitate to interfere with such erroneous exercise of jurisdiction while exercising writ jurisdiction.

26. In Sudhoo (supra), the Supreme Court found that the findings returned by the quasi judicial authority were based on appreciation of evidence produced by the parties. The Supreme Court did not agree with the conclusion that the findings recorded by the quasi judicial authority were based on no evidence. It was for this reason that the Supreme Court set aside the order of the High Court, whereby the High Court had interfered with the quasi judicial finding in the case. This judgement itself shows that if the quasi-judicial tribunals finding is not based on any material evidence, interference by the writ Court would be justified.

27. It would need examination from case to case, whether the order of the quasi judicial tribunal calls for interference in exercise of writ jurisdiction. The determination of the said issue would depend on the determination of the issues whether the order of the tribunal suffers from error of jurisdiction, or from breach of

the principles of natural justice, or is vitiated by manifest or apparent error of law. In the present case, the references made to the labour courts by the appropriate government are similar and that, made in WP (C) No. 883/2010 reads as follows: Whether the retrenchment from services of Shri Dheer Singh is illegal and/or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect.

28. A perusal of the impugned awards shows that while the aspect of illegality of the respondents retrenchment has been addressed by returning the findings that section 25F was not duly complied with, it is seen that the aspect of justifiability, or otherwise, of the retrenchment has not been gone into by the Labour Courts. The Labour Courts have also not considered the aspect as to what would be the appropriate relief to grant in the facts of the present cases. Pertinently, the respondents had not disputed the factum of the petitioners vast tract of land admeasuring 1600 bighas in village Chowkri Mubarikabad and Village Sadhora Khurd, New Delhi being acquired. The respondents had not established the fact that dispute the acquisition of the said land, the built up properties of the petitioner, which were leased out or granted on license to several persons were still available with the petitioner and not taken over. The respondents could not controvert that the work of management of the said leased/licensed properties including the work of collection of rent/license fee did not survive, post the acquisition of the land in question.

29. The aforesaid facts and circumstances clearly show that the aspect of justifiability, or otherwise, of the respondents retrenchment has been glossed over by the Labour Courts and the relief of reinstatement in service with back wages has mechanically been granted on the premise that the same is an automatic consequence of the retrenchment being found to be illegal. This approach of the Labour Court is patently erroneous, since, it is well settled that reinstatement in service does not automatically follow the return of the finding of the retrenchment being illegal. In the present cases, the petitioner has also not disputed that the retrenchment was illegal on two counts. Firstly, the component of house rent allowance was not taken into consideration while computing the retrenchment compensation which, admittedly, ought to have been done. Secondly, there was

no compliance of Rule 77 inasmuch, as, the seniority list of the workmen to be retrenched was not displayed. At the same time, this is not a case where it could be said that the petitioner was having work available with it, which could be done by the respondent workmen upon their reinstatement. The case of the respondents was that the petitioner could have posted the respondents in one of the several educational institutions being run by it under its management rather than retrenching the respondents. Merely because the petitioner is running several educational institutions is no ground to conclude that all the educational institutions constitute one establishment. The schools being run by the petitioner society are independently managed by the managing committees of each of these schools in accordance with the provisions of the DSE Act. Section 2(n) of the DSE Act defines managing committee to mean the body of individuals who are entrusted with the management of any recognised private school. Private school is defined in section 2(r) to mean a school which is not run by the central government, administrator or local authority or any other authority designated or sponsored by the central government, administrator or a local authority. Section 5 of the DSE Act mandates that the managing committee of every recognised school shall make, in accordance with the rules made under the Act, and with the provisions approved of appropriate authority, a scheme of management for such school. Section 8 of the DSE Act empowers the administrator to make rules prescribing minimum qualification of recruitment, and the conditions of service of employees of recognised private schools i.e. schools of the kind run by the petitioner. The conduct of the employees of a recognised school are governed by such code of conduct as may be prescribed by virtue of section 9 of the DSE Act. The salaries of employees i.e. scales of pay and allowances, medical facilities, pension, gratuity, provident fund etc. are governed by section 10 of the DSE Act. Section 28 of the DSE Act vests with the administrator the power to make rules to carry out the provisions of the Act. Clause (g) of section 28(2) provides that such rules may be made for prescribing minimum qualifications for, and method of recruitment, and terms and conditions of service employees. The Delhi School Education Rules, 1973 (the DSE Rules) provides in Rule 96 that recruitment of employees in each recognised private school shall be made on the recommendation of the selection committee. The selection committee constitutes of, inter alia, the

nominees of the managing committee and the Director of Education. Only in the case of appointment of group D employees, the selection committee consists of the chairman of the managing committee, or a member of the managing committee nominated by the chairman and the head of the school. The appointment of every employee of the school is made by its managing committee as per Rule 98 of the DSE Rules.

30. The aforesaid provisions of the DSE Act and Rules show that it is not the parent society such as the petitioner, which is the whole and sole authority to make appointments in the schools set up by it, in its entire discretion. The appointment, in such schools, of employees has to be done in accordance with the recruitment rules, and, invariably would be done with the participation of nominees of, inter alia, the Director of Education. The appointment is done by the managing committee of the particular school and not by the society which has set up the school. It is not the respondents case that the society itself is the managing committee of all the schools and educational institutions set up by it. Each school would have its own head/principal who is responsible for running the day to day affairs of the school and who functions with autonomy and independence.

31. I find merit in the petitioners submission that each of the schools and educational institutions set up by the petitioner society would have to be treated as a separate establishment. It is clear that there is no functional integrity in the establishment of the petitioner society with that of the several schools and educational institutions set up by it. Each of these educational institutions constitutes a separate establishment.

32. In Hindustan Steel Works Construction Ltd. (supra), the Supreme Court considered the issue whether the several construction projects being undertaken by the company at different locations could be treated as a part of the same establishment. No doubt, in the said case, the projects had a limited life and upon completion of the projects, the work of the establishment came to an end. In the present case, there is a distinction inasmuch, as, the schools and educational institutions are being run continuously. However, what is of relevance is the fact that the Supreme Court found that there was no functional integrity between the

company and its projects and, inter se, between the projects. Consequently, the Supreme Court refused to recognise all the projects of the company, and the company itself, as a single establishment. In the present case, as noticed above, in the light of the statutory scheme contained in the DSE Act and Rules framed therein, it cannot be said that there is functional integrity between the petitioner society and the schools/educational institutions set up by it and, inter se, between such schools and educational institutions. Pertinently, it is not the respondents case that their services were transferable from the society to the schools run by it and vice versa. It is equally pertinent to note that in Hindustan Steel Works Construction Ltd. (supra), even though such a condition of service existed and the employees were, in fact, transferred from one establishment to the other while retaining their seniority, yet the Supreme Court did not consider all such projects to be a part of the same project.

33. It is also pertinent to note that the Labour Courts have not even addressed themselves to the issue whether the work of the kind performed by the respondents existed in the schools and educational institutions set up by the petitioner and, if so, whether there was any vacancy for carrying out the said work. Without examining all these aspects, the grant of relief of reinstatement in service with full back wages merely because the Petitioner society had set up the schools/educational institutions, was wholly improper and uncalled for, particularly when the work which the respondent was performing ceased to exist with the acquisition of the land and structures thereon-which were being managed by the petitioner society and from which it was deriving rent and license fee. The labour courts while passing the impugned awards have not appreciated the background in which the respondents retrenchment had taken place. It is not for the labour court to dictate to the petitioner, the manner in which it should carry on its business or enterprise. It is for the petitioner to assess its need for working hands in the light of the drastically changed circumstances.

34. It is now well settled that reinstatement with back wages does not automatically follow the return of a finding of illegality in respect of the retrenchment. The petitioner has relied upon and I have extracted from the decisions of the Supreme Court in Shiv Kumar Sharma (supra) and District Red

Cross Society (supra). No doubt, Madhya Pradesh Administration (supra) was a case dealing with public employment. The Supreme Court held that the nature of appointment i.e. whether there existed any sanctioned post or whether the officer concerned had any authority to make the appointment are relevant factors. It was also relevant whether the appointment was made on ad-hoc basis or against a sanctioned post on permanent basis. However, these are not the only aspects which go into the formulation of the relief. In Madhya Pradesh Administration (supra), the Supreme Court noted its earlier decision in Uttaranchal Forest Development Corporation v. M.C. Joshi, (2007) 9 SCC 353.wherein the Supreme Court observed: . . It is now well settled by reason of a catena of decisions of this Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of the statutory rules. Delay in raising an industrial dispute is also a relevant fact.

11. In Haryana State Electronics Development Corpn. v. Mamni Ltd. [(2006) 9 SCC 43.:

2006. SCC (L&S) 1830 : AIR 200.SC 2427.this Court directed payment of compensation. Similar orders were passed in North-Eastern Karnataka Rt. Corpn. v. Ashappa [(2006) 5 SCC 13.:

2006. SCC (L&S) 942] and U.P. SRTC v. Man Singh [(2006) 7 SCC 75.:

2006. SCC (L&S) 1776] . In Man Singh [(2006) 7 SCC 75.:

2006. SCC (L&S) 1776] it was held: (SCC p. 754, paras 7-8) 7. The respondent admittedly raised a dispute in 1986 i.e. after a period of about 12 years, it may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back wages for the period during which the workman remains absent as has been held by this Court in Gurmail Singh v. Principal, Govt. College of Education [(2000) 9 SCC 49.:

2001. SCC (L&S) 105] . But the discretionary relief, in our opi- nion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation. Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time i.e. after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.

8. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back wages from 1986, interest of justice would be subserved if the appellant is directed to pay a sum of Rs 50,000 to him. Similar orders, we may place on record, have been passed by this Court in State of Rajasthan v. Ghyan Chand [(2006) 7 SCC 755., State of M.P. v. Arjunlal Rajak [(2006) 2 SCC 71.:

2006. SCC (L&S) 429] , Nagar Mahapalika (now Municipal Corpn.) v. State of U.P. [(2006) 5 SCC 12.:

2006. SCC (L&S) 934] and Haryana State Electronics Development Corpn. Ltd. v. Mamni [(2006) 9 SCC 43.:

2006. SCC (L&S) 1830 : AIR 200.SC 2427..

35. At the same time, reliance placed by the Petitioner on Nehru Yuva Kendriya Sangathan (supra) is not appropriate in the facts of the present case, since, that was a case dealing with an ad-hoc workman who had barely worked for about 240 days and, it was in that background that compensation -instead of reinstatement with full back wages, was considered to be the appropriate relief.

36. The decisions in Krishna Bahadur (supra), Anoop Sharma (supra) and Vijendra Singh Ladoo Singh Shekawat (supra), in my view, are of no avail, since they do not lay down as a proposition of law, that in every case of illegal retrenchment, reinstatement in service is the only appropriate relief to grant. As

aforesaid, the relief has to be moulded according to the facts of each case. Even if the respondents were permanent workmen, their reinstatement in service would not be justified merely because the retrenchment was found to be illegal, where the work which they were performing has ceased to exist on account of the changed circumstance. The law does not mandate that an employer should continue to engage a workman, even though there is no work left for him in the establishment.

37. I may also take note of my decision in W.P.(C.) No.3437/2010 titled Mahesh Dutt v. Ramjas Foundation decided on 02.04.2013. The said writ petition had been preferred by the workman to assail the award passed by the Labour Court, whereby the Labour Court had granted compensation of Rs.1,23,155/- to the petitioner, in lieu of reinstatement and back wages upon returning a finding of the retrenchment being illegal. The petitioner workman was aggrieved by that award, since he claimed that he was entitled to reinstatement with full back wages. In the facts of that case, this Court was of the view that the direction for reinstatement into service was not called for. However, the compensation awarded was enhanced by Rs.2 lacs.

38. Learned counsel for the petitioner has pointed out that, practically, in all the cases, the workmen could not dispute the fact that the retrenchment have been carried out by following the principle of seniority. In all these cases, the junior workman had been retrenched and the workmen had not been able to point out any instance of breach of the seniority rule. The only possible exception was the case of Narender Kumar (W.P.(C.) No.6515/2010). In his cross examination, the workman Narender Kumar had stated: It is incorrect to suggest that all my juniors were also retrenched along with me. One Sh. Dina Ram, Chet Ram, Rameshwar were junior to me but were retained by the management. It is incorrect to suggest that there were no employee with the management by the aforesaid names junior to me. I was not given the retrenchment benefits on the basis of my last drawn salary i.e. Rs.4905/-.

39. Even in this case, the workman had not produced the three workmen, namely, Dinaram, Chetram and Rameshwar who were claimed to be junior to him and

retained by the petitioner management. The cross examination of the workmen shows that the case of the management was that there no such employees working with the management.

40. In any event, even if it were to be accepted-as held by the labour courts, that Rule 77 was breached and the retrenchments were illegal for that reason, to my mind, it makes no difference to the relief that ought to have been granted in the facts of these cases. Pertinently, in all, 78 workmen were retrenched by the petitioner society, of which only 16 are before this court. To require the petitioner to take back the retrenched workmen into service, when there is no work for them in the establishment of the petitioner society, would be to sound a death knell to the society, as it would be unjustifiably burdened with recurring liability in respect of these workmen, without having any work for them.

41. For all the aforesaid reasons, the writ petitions are allowed and each of the respondents are granted compensation in lieu of reinstatement and back wages of Rs.3.25 lacs. From the said amount, the petitioner shall be entitled to adjust the amounts already paid towards retrenchment compensation to each of the respondents. The petitioner shall make payment of the balance amount to the respondents within three months from today. In case the amounts are not so paid, the outstanding amount shall carry interest @ 9% per annum from the date hereof till realisation. The impugned awards stand modified to the aforesaid extent. The parties are left to bear their respective costs.

42. Petitions stand disposed of. VIPIN SANGHI, J JULY 15 2013

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