
R.N.R.

Before Ranjit Singh, J.

**M/S INTERNATIONAL TRACTORS LTD. AND
ANOTHER,—Petitioners**

versus

**PRESIDING OFFICER, LABOUR COURT, JALANDHAR AND
ANOTHER—Respondents**

C.W.P. No. 16839 of 2009

13th January, 2011

Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S.2(s)—Labour Court directing reinstatement of workman with 40% back wages—Challenge thereto—Delay of one year in seeking reference—Workman serving management for only about 2 years—No record that workman was permanent employee—Labour Court failing to consider relevant factors while directing reinstatement—Compensation instead of reinstatement held to be equitable and just—Award of Labour Court modified.

Held that neither the nature of service, the extent of service and various other considerations relevant in this regard were either considered or evaluated. The respondent had worked with the Management from 11th October, 1996 to 1st July, 1998. The workman was delayed for a year to seek reference. There was a serious dispute about the status of the respondent as workman. There is no record that he was permanent employee. All these factors were not considered properly by the Labour Court to direct reinstatement.

(Para 13)

Further held, that compensation would be equitable and just in this case instead of reinstatement as the Labour Court in this regard had not applied its mind to the various relevant factors. Considering the entirety of the issue, a compensation of sum of Rs. 4 lacs would be adequate instead of reinstatement and the award passed by the Labour Court is accordingly modified to this an extent.

(Para 14)

Suveer Sehgal, Advocate, *for the petitioners.*

D.K. Nagar, Advocate, *for respondent No. 2.*

RANJIT SINGH, J.

(1) This writ petition is filed by the petitioner-Management to challenge the award passed by the Labour Court, which has directed reinstatement of the respondent-workman with 40% back wages on merits on various counts. During arguments, however, the counsel for the petitioner-Management has confined his prayer to plead for setting-aside the part of the award directing reinstatement and instead for adequately compensating the respondent.

(2) While issuing notice of motion, interim stay was granted on the condition that the amount, which was directed to be paid to the respondent, be deposited with the Labour Court within a period of six weeks. The court, however, had directed that the amount shall not be withdrawn until further orders. A sum of Rs. 2,13,400 accordingly was deposited by the petitioner-Management, which was due to the respondent-workman on account of back wages. The counsel for the petitioner has, thus, made limited prayer, as noticed above.

(3) Efforts were made at negotiation but the same failed. The counsel thereafter made their respective submissions. The counsel for the petitioner- Management would point out that the management had challenged the award of the Labour Court on the various counts, as noted below :—

- “(i) That respondent No. 2 never served any demand notice upon the management-petitioner No. 1. The service of demand notice upon the management is *sine qua non* for the initiation of the proceedings under the Industrial Disputes Act, 1947. In the absence issuance of any such notice by respondent No. 2, no proceedings could be undertaken against petitioners before the Labour Court.
- (ii) That the Labour Court had no jurisdiction to enlarge the scope of the reference made to it. On an application by respondent No. 2, the Labour Court *vide* order dated 30th September, 2003 (Annexure P-8), impleaded petitioner No. 1, a company registered under the Companies Act, 1956, as a party to the proceedings and thereby enlarged the scope of reference.
- (iii) That respondent No. 2 was working in a supervisory capacity as is clear from the list-annexure P-1. He did not fall within the definition of workman” under Section 2(s) of the Industrial Disputes Act, 1947. Moreover, he was never terminated from service but voluntarily absented from duty.
- (iv) That the Labour Court has gone wrong in awarding back wages at the rate of 40 per cent to the respondent No. 2, even though he had remained gainfully employed and had put in less than two years service with petitioner No. 1 disentitling him from claiming back wages.”

Still, the petitioner has confined prayer for praying adequate compensation to the respondent-workman instead of his reinstatement.

(4) The counsel for the petitioners has referred to number of the judgments to urge that there was no occasion for the Labour Court to direct reinstatement of the workman. As per the counsel, the recent trend, as would emerge from the various judgments of the Hon'ble Supreme Court, is that compensation is the norm instead of reinstatement. The only question,

thus, requiring consideration in this case would be to see whether an order of reinstatement should automatically follow or instead of reinstatement payment of compensation as a full and final settlement should be a substitute.

(5) The plea, however, is opposed by the counsel for the respondent-workman, who would submit that in **Harjinder Singh versus Punjab State Warehousing Corporation, (1)** and **Anoop Sharma versus Executive Engineer, Public Health Division No. 1, Panipat (Haryana), (2)** the Hon'ble Supreme Court has not approved the action of the High Court in interfering with the award passed by the Labour Court, where reinstatement was ordered but the High Court had instead granted compensation in lieu of reinstatement.

(6) The counsel for the petitioners would refer to the cases of **Ashok Kumar Sharma versus Oberoi Flight Services, (3)** and **Rajasthan Lalit Kala Academy versus Radhey Shyam, (4)** in support of his contention that even if the termination is held to be bad on any ground, reinstatement should not automatically follow and instead compensation is the norm as per the present trend. In **Ashok Kumar Sharma's (supra)**, the Hon'ble Supreme Court, after referring to number of earlier decisions, has observed that the view taken by the High Court that monetary compensation in lieu of reinstatement of the workman would be proper, cannot be said to be unjustified. While taking this view, reliance is placed on **U.P. State Brassware Corpn. Ltd. versus Uday Narain Pandey, (5)**. In this regard, it is held that the industrial courts while adjudicating on disputes between management and workmen must take decisions which would be in consonance with the purpose the law seeks to achieve. As is observed, when justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. The court has gone on to observe that rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law. A person is not entitled to get something only because it would be lawful to do so. The functions of the court would

- (1) 2010 (2) Law Herald 891
- (2) 2010 (3) Law Herald 1767
- (3) (2010) 1 S.C.C. 142
- (4) (2008) 13 S.C.C. 248
- (5) (2006) 1 S.C.C. 479

lose much of their significance, if this principle is to be applied in this manner. While granting relief, the courts have always emphasized application of mind on the part of Industrial Court to be imperative. Payment of full back wages cannot, therefore, be held to be a natural consequence.

(7) In **Sita Ram versus Moti Lal Nehra Farmers Training Institute**, (6) the court has held that Industrial Court exercises a discretionary jurisdiction but such discretion is required to be exercised judiciously. All relevant factors, therefore, are required to be taken into consideration. Accordingly, the nature of appointment, the period of appointment, the availability of a job etc. have to weigh with the court for determining an issue of reinstatement. The court has also observed that in large number of decisions, it has been viewed that payment of adequate amount of compensation in place of direction to be reinstated in service would subvert the ends of justice. Reference in this regard can also be made to **Jaipur Development Authority versus Ramsahai**, (7) **M.P. Admn. versus Tribhuban**, (8) and **Uttaranchal Forest Development Corpn. versus M.C. Joshi**, (9). Again this question came up for consideration before the Hon'ble Supreme Court in **Jagbir Singh versus Haryana State Agriculture Marketing Board**, (10). In the context of retrenchment of daily wager in violation of Section 25-F of the Industrial Disputes Act, the court has held as under :—

“It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

(6) (2008) 5 S.C.C. 75

(7) (2006) 11 S.C.C. 684

(8) (2007) 9 S.C.C. 748

(9) (2007) 9 S.C.C. 353

(10) (2009) 15 S.C.C. 327

(8) All the above-noted cases and some more were again considered by the Hon'ble Supreme Court recently in the case of **Incharge Officer and another versus Shankar Shetty, (11)**. The cases of **Jagbir Singh, U.P. State Brassware Corpn., Uttranchal Forest Development Corpn., M.P. Admn., Sita Ram, Jaipur Development Authority and Ashok Kumar (*supra*)** were also referred to with approval in this case. As is noticed by the Hon'ble Supreme Court, **Jagbir Singh's case (*supra*)** was applied in **Senior Superintendent Telegraph (Traffic) Bhopal versus Santosh Kumar Seal and Ors., (12)**. The Hon'ble Supreme Court in **Incharge Officer's case (*supra*)** found that the High Court has erred in granting relief of reinstatement to the respondent-workman if the principle stated in **Jagbir Singh's case (*supra*)** and the decisions of the said court referred to therein are kept in mind. The court, therefore, directed compensation of Rs. one lac in lieu of reinstatement and termed this to be an appropriate, just and equitable course.

(9) Reference here may also be made to **Rajasthan Lalit Kala Academy's case (*supra*)**. Issue in this case also was whether relief of reinstatement with back wages is to be automatically granted or not. The court observed that such relief is not to be granted automatically and listed the several factors, like the manner and method of selection, nature of appointment-*ad hoc*, daily wages, temporary or permanent etc., period of service, delay in raising industrial dispute etc. have to be taken into consideration in this regard. In this case, reliance is also placed on the decision of **Haryana Roadways versus Rudhan Singh, (13) Central P&D Inst. Ltd. versus Union of India, (14) Haryana State Electronics Development Corpn. Ltd. versus Mamni, (15)** and **M.P. Admn., (*supra*)** to notice that in all such cases, lump-sum amount was awarded in lieu of reinstatement. In this case, the Hon'ble Supreme Court has held as under :—

“Once the termination of service of an employee is held to be illegal, the relief of reinstatement is ordinarily available to the employec. But the relief of reinstatement with full back wages need not be granted automatically in every case where the Labour Court/ Industrial Tribunal records the finding that the termination of

(11) 2010 (4) S.C.T. 261

(12) 2010 (2) S.C.T. 609

(13) (2005) 5 S.C.C. 591-

(14) (2005) 9 S.C.C. 171

(15) (2006) 9 S.C.C. 434

services of a workman was in violation of the provisions of the Act. For this purpose, several factors, like the manner and method of selection; nature of appointment-*ad hoc*, daily wage, temporary or permanent etc., period for which the workman had worked and the delay in raising industrial dispute, are required to be taken into consideration."

(10) Three Judges Bench in **Haryana Roadway's case** (*supra*) has observed as under :—

"There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method and selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether *ad hoc*, short term, daily wage, temporary or permanent should be weighed and balanced in taking a decision regarding award of back wages. One of the important fact, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

(11) It can, thus, be seen that the consistent trend on the part of Apex Court is to consider compensation in lieu of reinstatement, which was earlier invariably awarded. No doubt, the Hon'ble Supreme Court in **Harjinder Singh's case** (*supra*) and **Anoop Sharma's case** (*supra*), has adopted somewhat different stances and has held that reinstatement when

ordered by the Labour Court may not call for interference, but as held in large number of cases, noted above, this would depend upon facts and circumstances of each case and has to be considered in the light of various factors, like manner and method of selection, nature of appointment, it being *ad hoc*, daily wage, temporary or permanent, the period of service rendered and delay in raising dispute etc., while considering reinstatement or awarding compensation instead and in lieu of the reinstatement.

(12) Since the counsel for the petitioners has confined his prayer to challenge the award on the limited ground of reinstatement and instead awarding compensation in lieu thereof, it may call for examination whether the Labour Court has considered the relevant factors while directing reinstatement of the respondent-workman or not. A perusal of the impugned award would show that **Rajasthan Lalit Kala Academy's case** (*supra*) was placed before the court and which was found attracted to the case. The termination was set aside on account of the ratio of law laid down in this case. While considering the question of reinstatement or compensation, relevant factors apparently were not taken into account and the case of **Arjun Singh and others versus Labour Court, Jodhpur and others**, (16) was casually distinguished and reinstatement of the respondent-workman with continuity of service with 40% of back wages ordered.

(13) Neither the nature of service, the extent of service and various other considerations relevant in this regard were either considered or evaluated. The respondent had worked with the Management from 11th October, 1996 to 1st July, 1998. The workman has delayed for a year to seek reference. There was a serious dispute about the status of the respondent as workman. There is no record that he was permanent employee. All these factors were not considered properly by the Labour Court to direct reinstatement.

(14) Taking into account the ratio of law that would emerge from various judgments as noticed above, it can be viewed that compensation would be equitable and just in this case instead of reinstatement as the Labour Court in this regard had not applied its mind to the various relevant factors. Considering the entirety of the issue, a compensation of sum of Rs. 4 lacs, in my view, would be adequate instead of reinstatement and the award passed by the Labour Court is accordingly modified to this an extent.

(15) The writ petition is accordingly disposed of in the above terms.

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