(2009) 09 DEL CK 0333

Delhi High Court

Case No: Writ Petition (C.) No. 4453 of 2003

The Management of Hindustani Dawakhana and Ayurvedic Rasayanshala		APPELLANT
	Vs	
Jagdish Singh Rajpoot		RESPONDENT

Date of Decision: Sept. 22, 2009

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Tibbia College Takeover Act, 1997 - Section 25F

Citation: (2009) 164 DLT 257 : (2010) 124 FLR 415 : (2010) 4 SLR 410

Hon'ble Judges: S.N. Aggarwal, J

Bench: Single Bench

Advocate: Ruchi Sindhwani, for the Appellant; Vikas Dutta, for the Respondent

Judgement

S.N. Aggarwal, J.
The management of the petitioner in this writ petition seeks to challenge an Industrial Award dated 08.07.2002 in ID No. 87/1990 directing reinstatement of the respondent with full back wages.

2. The petitioner is Hindustani Dawakhana and Ayurvedic Rashayanashala which was an ancillary unit of A&U Tibbia College. The petitioner was getting grant from the Delhi Government from time to time but w.e.f. 01.05.1998, the petitioner was merged into A&U Tibbia College alongwith ancillary unit as per the Tibbia College Takeover Act, 1997.

3. The respondent was appointed by the management of the petitioner as a helper on daily wages @ Rs. 21.60 per day with effect from 18.04.1988. He worked for short spell of time intermittently between 18.04.1988 till 31.03.1990. He was not granted any further extension beyond 31.03.1990 which was treated as his termination from service.

Aggrieved there from, he had raised an industrial dispute which was referred by the appropriate Government in the Government of NCT of Delhi to the Labour court for adjudication.

4. The management of the petitioner had disputed the claim of the respondent before the Labour Court on the ground that respondent was not entitled for reinstatement or back wages as he was only a daily wager. The petitioner had taken a stand before the Labour Court that the services of the respondent were not terminated and in fact he was not granted any extension beyond 31.03.1990 as his services were not required by the petitioner.

5. The Court below, however, has found the termination of the respondent to be illegal and, therefore, has directed his reinstatement with back wages. It is aggrieved by this order of the Court below, the petitioner has filed this writ petition.

6. Ms. Ruchi Sindhwani, learned Counsel appearing on behalf of the petitioner management has argued that since the respondent was employed only as a daily wager, the award directing his reinstatement is perverse and has to be set aside by this Court.

7. It is not disputed by the counsel for the respondent that the appointment of the respondent with the petitioner was as a daily wager. It is also not disputed by him that the respondent had worked intermittently for short spell of time during the period between 18.04.1988 till 31.03.1990. The appointment of the respondent with petitioner management as daily wager was a back door entry as it was not made by following the procedure for regular appointment. His appointment was in contravention of provisions of Article 14 and 16 of the Constitution of India.

8. Ms. Ruchi Sindhwani, counsel appearing on behalf of the petitioner has contended that the respondent even does not possess the requisite qualification for the appointment to the post of Assistant Attar/Assistant Compounder. According to her, even this post of Assistant Attar/Assistant Compounder does not exist with the management of the petitioner as on date, which fact has been stated by the petitioner on affidavit.

9. I need not go into the question whether the respondent possessed the requisite qualification for the post of Assistant Attar/Assistant Compounder or whether there is any post of Assistant Attar/Assistant Compounder in the petitioner management because in the opinion of this Court, the impugned award directing reinstatement of the respondent with full back wages cannot be sustained in view of the judgment of the Hon''ble Supreme Court in Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. [Civil Appeal No. 4334/2009 arising out of SLP (C) No. 987/2009] decided on 14.07.2009, wherein it was held:

It would be, thus, seen that by catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25F although may be set aside but an award of reinstatement should not, however, be automatically passed.

The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be property by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who dies not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

While awarding compensation, the host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from September 1, 1995 to July 18, 1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs. 50,000/- to the Appellant by Respondent No. 1 shall meet the ends of justice.

10. In view of the above judgment of the Hon''ble Supreme Court in Jagbir Singh''s Case, the directions for reinstatement of the respondent with back wages cannot be sustained. The petitioner had hardly worked for short spell of time with the petitioner management for about two years between 18.04.1988 and 31.03.1990. In the opinion of this Court, the relief granted by the Labour Court in favour of the respondent needs to be moulded and he can be compensated by awarding a reasonable compensation for the alleged termination of his services by the petitioner management.

11. Having regard to the period of service rendered by the respondent with the petitioner management as daily wager, his age and other relevant circumstances, this Court is of the opinion that the ends of justice will be adequately met by awarding a compensation of Rs. 50,000/- in favour of the respondent in lieu of reinstatement and back wages granted to him vide impugned award.

12. In view of what has been stated above, the impugned award is modified to the extent that instead of reinstatement and back wages, the respondent will be entitled only for a compensation of Rs. 50,000/- to be paid by the petitioner to him within a period of eight weeks from today. In case, the petitioner management fails to pay the compensation amount of Rs. 50,000/- to the respondent workman within eight weeks from today, then the respondent will also be entitled to interest @ 9% per annum on the compensation amount of Rs. 50,000/- till the date of payment.

13. This petition is partly allowed and stands disposed of in terms referred above.