

(2011) 03 DEL CK 0357

Delhi High Court

Case No: Writ Petition (C) 5458 of 2003

Bablu Das

APPELLANT

Vs

Mgt. of P.R. Electricals and
Another

RESPONDENT

Date of Decision: March 25, 2011

Hon'ble Judges: Rajiv Sahai Endlaw, J

Bench: Single Bench

Advocate: H.K. Chaturvedi and Anjali Chaturvedi, for the Appellant; P.K. Dikshit, for Sanjay Sehgal, for R-1, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.

The petition impugns the award dated 17th January, 2003 of the Labour Court on the following reference:

Whether the services of Sh. Bablu Das have been terminated illegally and / or unjustifiably by the management, and if so, to what relief is he entitled and what directions are necessary in this respect.

2. It was the defence of the Respondent employer before the Labour Court that the Petitioner was not a "workman" but a contractor and had left the work of the Respondent employer of his own accord on 4th May, 1993 after full and final settlement. It is not in dispute that the Petitioner was working as a Winder with the Respondent employer since 12th September, 1984 and was last receiving Rs. 1,250/- per month. The Labour Court on the defence of the Respondent employer of the Petitioner being a contractor, after consideration of the evidence led held that without the Respondent employer proving anything more, its bare statement that the Petitioner was doing the job of winding on contract basis could not be accepted. It was found that the Petitioner was carrying out the work of winding in the premises of the Respondent employer and under the directions of the Respondent employer and was thus an employee and a "workman" of the Respondent employer. With respect to the plea of full and final settlement, the Labour Court on the basis of

evidence led held that though a document of full and final settlement was prepared but the Petitioner workman had been able to prove by examination of himself and other witnesses that the said document was written under threat and compulsion; moreover the Petitioner workman had immediately filed a police report also in this regard. The Labour Court accordingly held that the Respondent employer had got executed the said document from the Petitioner forcibly.

3. Though deciding the issues aforesaid in favour of the Petitioner workman and holding that the termination of service of the Petitioner workman was illegal and unjustified, the Labour Court nevertheless granted the relief only of payment of compensation of Rs. 60,000/- to the Petitioner. One of the reasons given for denying the relief of re-instatement to the Petitioner workman was that owing to the allegations of theft by the Respondent employer against the Petitioner workman and of threats of coercion by the Petitioner workman against the Respondent employer, the Respondent employer would have lost confidence in the Petitioner workman.

4. Aggrieved from the non grant of the relief of re-instatement, the present petition was filed. Notice thereof was issued. However, the Respondent employer remained unserved for nearly three years. On 20th September, 2005, the Petitioner workman informed that the sole proprietor of the Respondent employer had expired. An application was filed for substitution of legal representatives and notice thereof issued to the legal representatives; since they were also not found at the address given, fresh address was furnished and the legal heirs of the deceased proprietor of the Respondent employer appeared on 28th July, 2008. The said legal heirs however did not appear thereafter and fresh notice was issued and which could only be served for 20th May, 2010 when time was sought by the legal heirs for filing counter affidavit. Thereafter on 16th August, 2010 final opportunity was given for filing the counter affidavit but the counter affidavit was still not filed. On the last date i.e. 6th December, 2010 again last and final opportunity was granted to file the counter affidavit but it has not been filed till now. The counsel for the legal representatives today again seeks time to file counter affidavit stating that the records could not be collected till now.

5. However, since last and final opportunity for filing the counter affidavit has already been granted twice, the request cannot be acceded to and the counsels have been heard.

6. The counsel for the Petitioner contends that the relief of reinstatement ought to have followed the finding of termination of employment being illegal. Reliance in this regard is placed on the recent judgment dated 2nd April, 2009 of the Division Bench of this Court in LPA No. 85/2009 titled Kamla v. The Management of Director of Social Welfare where it was held that ordinarily where a workman whose services were terminated illegally will be entitled to reinstatement and compensation in lieu of reinstatement may be awarded only in unusual and exceptional cases. It was

further held that in the absence of cogent and valid reason, it would not be proper for the Labour court to deny the relief of reinstatement to a workman whose services have been illegally terminated.

7. Reliance is placed next on para 12 of the Management of Delhi Transport Corporation v. Ram Kumar 1992 LAB. I.C. 1378 where the Division Bench of this Court held that unsubstantive plea of loss of confidence ought not to come in the way of grant of relief of reinstatement. He contends that the Labour Court in the present case has denied the relief of reinstatement only on the ground of loss of confidence and which as aforesaid held by the Division Bench could not have been done.

8. The counsel for the legal heirs of the Respondent employer has not been able to urge any submissions.

9. I find that the Labour Court in paras 16 & 17 of the award has given yet another reason for grant of the relief of compensation only. Reliance was placed on certain judgments of this Court holding that the Court was free to adopt any of the two reliefs, of reinstatement or compensation as it may consider expedient.

10. The Labour Court in the award impugned in this petition has not returned any finding of the Petitioner workman having committed theft and in lieu of dropping which charge the full and final settlement relied upon by the Respondent employer was recorded. I find merit in the contention of the Petitioner workman that without the incident of theft having been proved, no reason of loss of confidence could have been cited for denying the relief of reinstatement.

11. However the Apex Court recently in Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, has reiterated that compensation in lieu of re-instatement can be granted in appropriate cases. In the present case, the Petitioner workman has not been working with the Respondent employer for the last over 17 years. Moreover, the employer is now no more. The counsel for the legal heirs is not even able to state whether the legal heirs are carrying on the business in which the Petitioner workman was employed. I do not find it appropriate that the Petitioner workman be now directed to be employed with a new employer. Thus, the relief of re-instatement in view of further a long time having elapsed since the award and the subsequent event of demise of the Respondent employer is not found appropriate.

12. The question however arises whether the compensation awarded is adequate. It has been enquired whether the said compensation has been paid or tendered. The answer is in the negative. It has also been enquired whether the Respondent employer challenged the award. The answer is again in the negative. The compensation of Rs. 60,000/- as of today, for the illegal termination in the year 1993 is found inadequate. The Respondent employer having not paid / tendered the compensation till now, are liable for payment of interest thereon. Even if interest

were to be added on the said compensation, the same would take the amount of compensation to over Rs. 1,00,000/-.

13. In the entirety of the facts and circumstances of the case, I am of the view that the justice will be done if the amount of compensation together with interest etc. due thereon till today is enhanced to Rs. 1,50,000/-. Since the component of interest till today has been taken into consideration in arriving at the said figure, future interest on the said amount at the rate of 10% per annum shall run only if the said amount remains unpaid for four weeks of today. The award of the Labour Court is modified accordingly. The Respondent employer is directed to pay the sum of Rs. 1,50,000/- to the Petitioner workman within four weeks of today failing which besides the other remedies of the Petitioner workman, the said amount shall also incur interest at the rate of 10% per annum.

The petition is disposed of. No order as to costs.