

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) NO. 8658/2005**

% **Date of Decision : 30.4.2009**

U.P. Export Corporation Ltd. Petitioner

Through Mr. Puneet Parihar, Advocate

Versus

Bhagwan Singh Respondent

Through Ms.K.Prabhakar Rao, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

- | | | |
|----|---|----|
| 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 in the Digest? | NO |

V. K. SHALI, J. (Oral)

1. The present writ petition has challenged the award dated 15th March, 2004 passed by learned Labour Court No.VII in ID No.174/1997 in case titled **Sh. Bhagwan Singh Vs. M/s Gangotri U.P. Export Corporation Ltd.** By virtue of the aforesaid award the learned Labour Court held that the petitioner/management had illegally and unjustifiably terminated the services of the respondent /workman on 21st May, 1996, and accordingly, ordered his reinstatement and

payment of full back wages. The petitioner/management feeling aggrieved by the aforesaid ex-parte award has challenged the same.

2. I have heard the learned counsel for the petitioner and have also gone through the record. The learned Labour Court after recording the evidence of the respondent/workman had given an opportunity to the petitioner/management to adduce their evidence, however, despite having been filed their written statement and adduced evidence. On the contrary, they had been proceeded ex-parte on 27th October, 1998 on account of their absence as a consequence of which the testimony of the respondent /workman with regard to the relationship of employer and employee between the parties is completely un rebutted. The learned Labour Court had accordingly held that on the basis of the un rebutted testimony of the respondent/workman the services of the said workman were terminated on 21st May, 1996 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, and accordingly, directed the reinstatement and the payment of full back wages.

3. In the entire writ petition, there is not an iota of averment as to why the petitioner/management did not appear either on 27th October, 1998 or even thereafter till the time the award was passed and thus there is no ground for setting aside ex parte award as sufficient cause is not proved.

4. The learned counsel for the petitioner has contended that the order regarding the reinstatement and the payment of full back wages

which has been passed by the learned Labour Court may be modified on account of the fact that in 1999 a circular was issued by the Government of U.P. that all the public sector undertakings corporations to downsize the permanent staff strength as a measure of reducing the expenses of the Government. It is contended that so far as the petitioner/corporation is concerned, its staff strength had been fixed at 130 and consequently in order to give effect to the said circular the petitioner/corporation had to downsize the staff in category of class-IV of the Corporation.

5. It has been now laid down by the Apex Court in number of judgments that merely on account of the fact that the termination of a workman is held to be illegal and unjustified does not ipso facto or automatically result in passing the order of reinstatement and the payment of back wages. Reliance in this regard is placed on the following judgments :

(a) PVK Distillery Ltd. Vs. Mahendra Ram *JT 2009 (3) SC 169*

(b) Rajasthan Lalit Kala Academay Vs. Radhey Shayam
2008 (10) SCALE 561

6. Keeping in view the aforesaid legal position that the petitioner/corporation was required to downsize the staff strength, therefore, this Court feels that in exercise of powers under Section 11A of the Industrial Disputes Act, 1947 instead of direction the reinstatement and the payment of bull back wages a onetime compensation of Rs.2.00 lakh will be directed to be paid to the

respondent/workman. The aforesaid amount is directed to be paid keeping in view the last drawn wages, length of service which has put in by the respondent/workman with the petitioner/corporation. Needless to point that the aforesaid amount shall be in addition to amount which is to be paid by the petitioner/corporation in compliance to the order dated 23rd November, 2006 passed under Section 17-B of the Industrial Disputes Act, 1947. It is also made clear that the aforesaid amount shall be paid within a period of six weeks from today, failing which entire amount shall carry an interest @7% from the date of the award till the actual payment.

7. With these directions, the ex parte award dated 15.3.2004 is modified to the extent that instead of reinstatement and payment of back wages, the respondent is paid one time compensation towards the full and final settlement of his entire claim. With these modifications, the writ petition is partially allowed.

No order as to costs.

APRIL 30, 2009
KP

V.K. SHALI, J.