

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

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Judgment delivered on: 31.07.2014

+ **W.P. (C) 780/2001**

**N.K. JOSHI**

..... Petitioner

versus

**M/S MODERN BAKERIES (INDIA) LTD. & ANR.** ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Petitioner in person.

For the Respondents : Mr Sandeep Prabhakar with Mr Vikas Mehta.

**CORAM:-**

**HON'BLE MR JUSTICE VIBHU BAKHRU**

**JUDGMENT**

**VIBHU BAKHRU, J**

1. The present petition has been filed by the petitioner impugning an award dated 19.01.2000 passed by the Labour Court, Delhi in I.D. No.239/98 [I.D. No.84/81 (old)] (hereinafter referred to as the 'impugned award'). By the impugned award, the Labour Court has set aside an order terminating the services of the petitioner and awarded a lump sum amount of ₹50,000/- as compensation in lieu of reinstatement and back wages.

2. The petitioner is aggrieved by the impugned award, inasmuch as, though the enquiry held against the petitioner has been found to be vitiated and held to be illegal, yet the petitioner has not been reinstated in service but has been awarded compensation of a sum of ₹50,000/- in lieu of reinstatement and back wages. The petitioner contends that the said

compensation is wholly inadequate. It is contended by the petitioner that he had been victimized by the management and although the impugned award is ostensibly in his favour, the management has effectively succeeded in its endeavors to inflict punishment on the petitioner-workman. It is further asserted that the petitioner had remained unemployed even prior to the date of the award and thus ought to be reinstated.

3. The brief facts relevant for consideration of the present petition are as under:-

3.1. The petitioner was working with the respondent as an Operator since 14.05.1975. The petitioner as well as four other workmen were charged with physically obstructing the official car of one Mr P.C. Goel, who was at the material time designated as the General Manager of the respondent company. The alleged incident took place at 1.00 p.m. on 16.12.1978, while the said workmen were allegedly on an illegal strike. The workmen were also charged with inciting other workers to throw stones at the official car, as a result of which the workers pelted stones on the said car and as consequence thereof, the vehicle was damaged.

3.2. In January 1979, a show cause notice was issued to the petitioner and subsequently, disciplinary proceedings were initiated on a complaint made by Mr P.C. Goel and charge-sheet dated 24.01.1979 was issued. During the pendency of the disciplinary proceedings, the petitioner was suspended w.e.f. 25.01.1979 and one Mr K.P. Sareen was appointed as enquiry officer to conduct an enquiry into the charges framed against the workmen. In the enquiry proceedings, Mr P.C. Goel was also examined as a witness. The

enquiry officer found the petitioner and two other workmen, namely, R.K. Joshi and Yashvir Singh as guilty of the charges leveled against them. The charges against the other two workmen could not be proved.

3.3. Based on the findings of the enquiry officer, punitive measures were taken against the workmen who were found guilty of the charges, including the termination of services of the petitioner w.e.f. 25.02.1980. It is material to note that the show cause notice, charge-sheet, suspension letter and termination letter were issued by Mr P.C. Goel and the enquiry officer was also appointed by Mr P.C. Goel. Thereafter, the petitioner approached the Conciliation Officer, however, the conciliation proceedings were not fruitful and on 26.08.1981, the dispute was referred to the Labour Court with the following reference:-

*“Whether termination of service of Shri N.K. Joshi is legal and/or justified and, if not, to what relief is he entitled and what directions are necessary in this regards?”*

3.4. By the impugned award, the Labour Court found that the enquiry against the petitioner was vitiated since Mr P.C. Goel was not only the complainant and a witness but also the Disciplinary Authority. Further, the Enquiry Officer had admitted that he was appointed by Mr P.C. Goel. The Labour Court rejected the contention of the respondent that the presence of Mr P.C. Goel at the time of incident was only a matter of co-incidence and since Mr P.C. Goel was the also the Disciplinary Authority, he was obliged to take appropriate action. And, by applying the doctrine of necessity, the procedure for conducting the enquiry and thereafter terminating the petitioner’s services could not be faulted. In addition, the Labour Court also

found that the action of the respondent in reducing the subsistence allowance of the workman on account of his absence on one date, during the enquiry proceedings, was not justified. The petitioner was also not given a list of witnesses and this too led to the conclusion that the enquiry against the petitioner was vitiated.

4. Although the Labour Court concluded that the enquiry against the petitioner was illegal, it did not grant the relief of reinstatement to the petitioner and instead awarded compensation of ₹50,000/- in lieu of reinstatement and back wages. The relevant extract of the impugned order is as under:-

*“18. Since the enquiry has been held to be vitiated, the action of the management is illegal.*

*19. As regards relief part it may be observed that more than 20 years have been passed and now it is not desirable to order reinstatement. In taking this view I am fortified by 1995 (2) LLJ 126 Supreme Court and latest decision of our own Hon’ble High Court in 1999 LLR 1050.*

*20. The proper course would be to award lump sum compensation in lieu of reinstatement as well as back wages. During arguments I was informed that similar course was adopted in the case of co-worker namely Yashbir by Hon’ble Apex Court. The workman has not disclosed his last drawn wages either in the statement of Claim or affidavit. He worked with the management from 14.5.75 to 24.1.79. Thus, I deem it proper to award a sum of Rs.50,000/- as lump sum compensation. The issue is decided accordingly.”*

5. The learned counsel for the respondent has stated that the impugned award cannot be faulted and the decision of the Labour Court to award compensation in lieu of reinstatement and back wages was appropriate in

the given circumstances of the case. He further referred to the order dated 13.01.1992, passed by the Supreme Court in Shri Yashvir Singh v. M/s. Modern Food Industry & Anr.: AIR 1993 SC 961, whereby the Supreme Court had also directed payment of ₹75,000/- as an adequate compensation in lieu of reinstatement and back wages to Yashvir Singh who was a co-worker with the petitioner and whose services had been also been similarly terminated on account of the same incident that took place on 16.12.1978.

6. It was further contended by the learned counsel that finding of the Labour Court that the enquiry was vitiated is erroneous as under the Standing Orders, Mr P.C. Goel being the General Manager was the Disciplinary Authority and was, thus, bound to discharge his functions as such. This necessitated that Mr P.C. Goel pass the order of termination of the services of the petitioner.

7. I have heard the petitioner and the learned counsel for the respondent at length.

8. In the present case, the termination of services of the petitioner cannot be upheld as valid. It is well settled that a disciplinary authority cannot be a complainant as well as a witness in an enquiry. A disciplinary authority is charged with a duty to take an unbiased view, in respect of the enquiry proceedings. He, therefore, cannot obviously be a complainant as well as a witness and take a view on the complaint which he has endeavored to prove. This would clearly be a case where the maxim "*nemo debet esse judex in propria causa*" (no man shall be a judge in his own cause) would be applicable. The Supreme Court in the case of Mohd.

**Yunus Khan v. State of U.P. & Ors: (2010) 10 SCC 539**, while considering a similar issue, after referring to various decisions held as under:-

*“Thus, the legal position emerges that if a person appears as a witness in disciplinary proceedings, he cannot be an inquiry officer nor can he pass the order of punishment as a disciplinary authority. This rule has been held to be sacred. An apprehension of bias operates as a disqualification for a person to act as adjudicator. No person can be a Judge in his own cause and no witness can certify that his own testimony is true. Any one who has personal interest in the disciplinary proceedings must keep himself away from such proceedings. The violation of the principles of natural justice renders the order null and void.”*

9. It is also relevant to bear in mind that the present petition has been filed by the petitioner workman and, thus, the only question that remains to be answered is whether the Labour Court erred in not reinstating the petitioner along with back wages and awarding compensation of ₹50,000/- in lieu thereof. And, whether the compensation of ₹50,000/- was adequate in the given facts and circumstances of the case.

10. It is a trite law that the relief of reinstatement with back wages would not necessarily follow even if the dismissal of an employee from his services is held to be illegal. The relief of reinstatement and back wages is not an automatic remedy in case termination of an employee is turned down as illegal. In certain cases, compensation instead of reinstatement would be an appropriate relief. The exact nature of relief and remedy would depend upon the facts and circumstances of the case. There are various factors that need to be considered in evaluating the relief to be granted to a workman, including length of service of employee, manner and method of

appointment, permanent or temporary employment, the period since dismissal of the services etc. The Supreme Court in the case of **Jagbir Singh v. Haryana State Agriculture Mktg. Board:** (2009) 15 SCC 327 examined catena of decisions and held as under:-

*“7. 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 a 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.*

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*17. While awarding compensation, a 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.”*

11. In the present case, the petitioner joined the services of the respondent on 14.05.1975 and was suspended on 25.01.1979. Thus, whereas the petitioner barely served for three and a half years, the dispute culminating in the award carried on for two decades. The Labour Court considered the fact that the services of the petitioner were terminated more than 20 years ago prior to the award and given these circumstances, granted the relief of awarding compensation in lieu of reinstatement and back wages. In my view, this decision cannot be faulted and in the given

circumstances, the relief of compensation would be an appropriate relief to meet the ends of justice. However, the quantum of compensation awarded to the petitioner is required to be enhanced. There is considerable merit in the contention of the petitioner that the compensation of ₹50,000/- is not adequate. In the case of **Yashvir Singh** (*supra*), the co-worker of the petitioner who was similarly charged was awarded a compensation of ₹75,000/- which was considered by the Supreme Court as an adequate compensation. The relevant extract of the decision of the Supreme Court in the case of **Yashvir Singh** (*supra*) is as under:-

*“After hearing these rival contentions, we thought it proper to put an end to the matter by directing payment of adequate compensation to the workmen but not granting him reinstatement with backwages. We therefore do not interfere with the order on condition that Rs.75,000/- will be paid by way of compensation to the petitioner within a period of one month. The compensation amount may be paid to the petitioner directly. The petitioner will approach the company on receipt of the letter from the Company in that behalf. The Special Leave Petitioner is disposed of accordingly.”*

12. Given the fact that the petitioner and Yashvir Singh were similarly situated, it would be appropriate that the compensation payable to the petitioner be enhanced from ₹50,000/- to ₹75,000/-.

13. This Court has been informed that the petitioner has already withdrawn the compensation of ₹50,000/- awarded by the Labour Court. In the circumstances, I direct that the respondent pay a further sum of ₹25,000/- along with interest @ 15% per annum from the date of the award till date of payment. The said payment would be paid to the petitioner within a period of one month from today.



14. The present petition is disposed of with the aforesaid directions.

**VIBHU BAKHRU, J**

**JULY 31, 2014**

pkv/RK

