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

% **Date of order : 31st January, 2024.**

\+ W.P.(C) 9340/2019

UTTAM CHAND BHATIA ..... Petitioner
Through: Mr.Sudhir Sharma, Advocate

versus

GOVT. OF NCT OF DELHI AND ANR. ..... Respondent
Through: Mr.Kamal Kant Tyagi, Advocate for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226/227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

> *"(i) Direct the Respondent to reinstate Petitioner with complete back wages and all the consequential benefits may also be granted to the petitioner by modifying the award dated 05.01.2019 OR in the alternative*
> *(ii) direct the respondent to pay an amount of Rs. 30,00,000/- as compensation for mental harassment and loss of livelihood and loss of reputation, career prospects and as a penalty towards malicious prosecution, wrongfully tampering/ influencing the domestic enquiry and trial before the Ld.*

Labour Court, mental agony, etc.
(iii) Direct the Respondent No. 2 to pay cost of litigation of rupees three lac.
(iv) Any other or further relief as this Hon'ble Court may deem fit and proper, in the interest of justice, may also be granted in favour of the petitioner and against the respondents..”

2. The petitioner was appointed at the post of General Worker with the respondent no. 2 (hereinafter “respondent hotel”) vide appointment letter dated 27th June, 1989.

3. A complaint of theft was filed against the petitioner by a customer of the respondent no. 2 stating that the petitioner workman stole her mobile phone which she had left on a table in one of the hotel rooms.

4. The management of respondent hotel issued chargesheet dated 4th January, 2007 against the misconduct of the petitioner. Pursuant to the same, the petitioner submitted its reply on 20th January, 2007 to the aforesaid chargesheet.

5. Thereafter, the respondent no. 2 vide letter dated 31st January, 2007 appointed Ms. Jyotica Bhasin as the Enquiry Officer to conduct the enquiry into the complaint made against the petitioner. After conclusion of the enquiry, the enquiry report was submitted and petitioner’s employment with the respondent no. 2 was terminated vide termination letter dated 6th February, 2008.

6. Thereafter, the petitioner on 14th February, 2008, sent a demand notice to the respondent no. 2 seeking his reinstatement and payment for the time when he was terminated. The respondent hotel did not reply to aforesaid

demand notice of the petitioner.

7. Subsequently, the petitioner filed its claim under Section 2A and Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter "the Act") before the learned Labour Court. The respondent hotel filed its reply to the claims of the petitioner.

8. Accordingly, the issues were framed and the witnesses were examined by the learned Labour Court. The learned Labour Court then passed the impugned award dated 5th January, 2019 wherein the learned Labour Court directed the respondent hotel to pay Rs. 6,50,000/- to the petitioner as compensation.

9. Aggrieved by the impugned award, the petitioner has preferred instant petition.

10. Learned counsel appearing on behalf of the petitioner submitted that the impugned award has been passed by the learned Labour Court in violation of the principles of natural justice and without appreciating the evidence placed on its record by the petitioner.

11. It is submitted that the petitioner is entitled to reinstatement along-with the consequential benefits instead of a lumpsum compensation as awarded by the learned Labour Court.

12. It is further submitted that the amount which the learned Labour Court has awarded as compensation to the petitioner is meagre in comparison to the harassment as well as inconvenience which the petitioner workman had to suffer. Hence, the petitioner is entitled for enhancement of the lumpsum compensation awarded to the petitioner.

13. It is submitted that the enquiry initiated against the petitioner by the respondent no. 2 was not conducted in a fair manner, since the enquiry officer refused to summon the duty registers as well as the other competent witnesses on the request of petitioner therefore, the petitioner was unable to present his defence before the enquiry officer.

14. It is submitted that the respondent management has failed to prove that the petitioner had entered into the room in the absence of the guest. The same is also evident from the fact that the MW-4, Smt. Shalini Upreti conceded in her evidence that Sh. Jaya Raghu, Shantanu as well as Sh. Rohit entered the said room in the absence of the guest.

15. It is submitted that the respondent has failed to prove even on the basis of preponderance of probability that the petitioner stole the hotel guest's mobile phone.

16. It is submitted that the respondent maliciously issued chargesheet to the respondent to terminate the petitioner since, the petitioner had demanded a raise in his wage.

17. In view of the foregoing submissions, the learned counsel for the petitioner prayed that the petition may be allowed and the reliefs as claimed by the petitioner may be granted by this Court.

18. *Per Contra,* the learned counsel appearing on behalf of respondents, vehemently opposed the aforesaid submissions, submitting to the effect that the impugned order has been passed in accordance with the settled position of law and merits no interference.

19. It is submitted that the learned Labour Court has correctly held that a

considerable delay has lapsed since the petitioner was terminated and accordingly, the learned Court has rightly exercised its discretion in awarding the lump sum compensation.

20. It is further submitted that the learned Labour Court did not award reinstatement to the petitioner since the respondent management had lost confidence in the petitioner workman as it was found that the petitioner workman stole the mobile phone of a respondent hotel's guest. Reliance in this regard has been placed upon the judgment of the Hon'ble Supreme Court in ***Kanhaiyalal Agrawal and Ors. v. Factory Manager, Gwaliar Sugar Co. Ltd.*** **(2001) 9 SCC 609** in this regard.

21. It is contended that the learned labour Court has the discretion vested under the law to award the lumpsum compensation in lieu of reinstatement along with the consequential benefits to the petitioner. The learned counsel for the respondent has placed reliance on the following judgments in this regard ***Sain Steel Products v. Nepal Singh and Others*** **(2003) 4 SCC 628,** ***Pramod Kumar and Another v. Presiding Officer and Another,*** **(2005) SCC OnLine Del 951,** ***Delhi Transport Corporation v. Presiding Officer and Anr.*****, (2001) SCC OnLine Del 1242** and ***Rattan Singh v. Union of India, (1997) 11 SCC 396***.

22. In view of the foregoing submissions, learned counsel for the respondents prayed that the present petition is devoid of any merits and may be dismissed by this Court.

23. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

24. It is the case of the petitioner that it was wrongly alleged that he had stolen the mobile phone of one of the guest of the respondent hotel. Moreover, the enquiry conducted by the enquiry officer in this regards was tainted with *mala fide* intentions of the respondent hotel in order to terminate the petitioner's employment since the petitioner demanded a raise in his wage.

25. In rival submissions, the respondent submitted that the impugned award has been passed in accordance with the settled principle of law and the learned Court has correctly held that a considerable amount of time has been elapsed since the termination of the petitioner and therefore, the petitioner was awarded lumpsum compensation in lieu of reinstatement along with the consequential benefits.

26. In order to adjudicate the instant petition, it is imperative to note the powers of this Court under Article 226 of the Constitution of Indi. Under the said provision, this Court has a very limited power to intervene into the working of the executive. The High Court under its writ jurisdiction shall not intervene with the working of the executive unless there is a prejudice caused to any party by the executive authority or the executive authority is not acting as per the mandate of a particular statute.

27. The position as to what must be observed by the High Court while exercising an issuance of writ in the form of certiorari can be fairly summed up *via* two cardinal principles of law, *firstly,* the High Court does not exercise powers of an appellate authority and it does not review or peruse the evidence upon which the consideration of the inferior Court purports to

have been based. The writ of certiorari can be issued if an error of law is apparent on the face of the record. *Secondly*, in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority. Simply put, certiorari is issued for correcting errors of jurisdiction exercised by inferior Courts, for Courts violating principles of natural justice and acting illegally and, the Court issuing such a writ shall act in supervision and not as appellate authority.

28. Further, it is also imperative for this Court to briefly revisit the settled law regarding issuance of the 'writ of mandamus'. The term mandamus means 'a command'. A writ of mandamus is issued in favor of a person who establishes a legal right in himself. It is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from discharge of a public duty or by operation of law.

29. Now adverting to the issue at hand.

30. Before delving in to the technical aspects of the instant matter, this Court finds it pertinent to analyze the impugned award. The relevant portion of the impugned award has been reproduced herein below:

> "*In the light of above, the management has been failed to establish the mis-conduct on the part of workman resultantly, the act of management of terminating the services of the workman is found to be illegal and unjustified. The issue/point is liable to be decided in favour of workman and against the management. Same stands decided accordingly.*
> *Relief*
> *In his statement of claim the workman has prayed that an*

award may be passed in favour of workman thereby seeking direction to reinstate the workman with full back wages and continuity of his service with all consequential benefits but in the considered opinion of the court this is not a fit case for the reinstatement, particularly in the facts and circumstances of the case, and also as a considerable period of time has been elapsed and the end of justice will be served if a lump sum compensation is awarded to the workman instead of reinstatement, backwages, and other consequential benefits.

Accordingly, in view of the above discussion and terms of reference, and keeping in view the tenure of service of the workman with the management and the material available on record, a lumpsum compensation of Rs.6.50.000/- (Rupees Six Lakh Fifty Thousand Only), is awarded to the workman instead of reinstatement and backwages and other consequential benefits. The management is directed to pay the said compensation amount of Rs.6,50,000/- (Rupees Six Lakh Fifty Thousand Only) is awarded to the workman instead of reinstatement and backwages and other consequential benefits. The management is directed to pay the said compensation amount of Rs.6,50,000/- (Rupees Six Lakh Fifty Thousand Only) to the workman within three months from the date of publication of award. If the management failed to pay the said amount of Rs.6.50.000/- (Rupees Six Lakh Fifty Thousand Only) to the workman within the stipulated period, the workman is at liberty to get recover the said compensation amount of Rs.6.50,000/- (Rupees Six Lakh Fifty Thousand Only) from the management along with an interest @8% p.a. from the date of passing of award till the date of recovery of the amount of compensation. The award is passed accordingly. Requisite copies of award be sent to the competent authority for publication as per provisions of Industrial Disputes Act."

31. Upon perusal of the impugned award, it is evident that the learned Labour Court passed the award holding that the management of the

respondent hotel has failed to establish that there was any misconduct, i.e., alleged theft of mobile phone committed by the petitioner. Hence, the issue was decided in favour of the petitioner.

32. The learned Labour Court further observed that the instant case is not fit for grant of reinstatement along with the all consequential benefits since, a considerable amount of time has elapsed. Therefore, in order to serve the ends of justice a lumpsum compensation of Rs. 6,50,000/- along-with an interest of 8% per annum from the date of award till the date of recovery of the amount of the compensation is awarded in favour of the workman.

33. The position of law with regard to whether the Courts can award lumpsum compensation instead of reinstatement along-with consequential benefits to the workmen while adjudicating upon an Industrial Dispute is settled.

34. It is a settled law that if the Labour Court is of the opinion that the award of certain compensation would meet the ends of justice in a particular case, then keeping in mind the relevant facts and circumstances of that case, the Labour Court has the power to award compensation even though there may be a claim for back wages or reinstatement made by the workman.

35. This power is derived from Section 11-A of Industrial Disputes Act, which deals with power of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. Section 11-A of the Act has been reproduced herein below for reference:

> "*..11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or*

dismissal of workmen.—Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter…"

36. The aforesaid position of law has also been reiterated in the judgment of ***U.P. State Brasware Corporation Ltd. Vs. Uday Narain Pandey*, 2006 1(SCC) 479**, relevant portions of which have been reproduced as follows:

"*30.* *In Panitole Tea Estate v. Workmen [(1971) 1 SCC 742 : (1971) 3 SCR 774] a two-Judge Bench of this Court while considering the question as regards grant of relief or reinstatement, observed: (SCC p. 747, para 5)*

"The general rule of reinstatement in the absence of special circumstances was also recognised in the case of Workmen of Assam Match Co. Ltd. v. Presiding Officer, Labour Court [(1973) 2 LLJ 279 (SC)] and has again been affirmed recently in Tulsidas Paul v. Second Labour Court, W.B. [(1972) 4 SCC 205 (2)] In Tulsidas Paul [(1972) 4 SCC 205 (2)] it has been emphasised that no hard-and-fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide

the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication."

31. *In Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [(1980) 4 SCC 443 : 1981 SCC (L&S) 16 : (1981) 1 SCR 789] this Court refused to go into the question as to whether termination of services of a workman in violation of the provisions of Section 25-F is void ab initio or merely invalid or inoperative on the premise that semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. In that context, Chinnappa Reddy, J. observed: (SCC p. 447, para 6)*

"Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

32. *Yet again, no law in absolute terms had been laid down therein. The Court proceeded on the basis that there may be situations where grant of full back wages would be inequitable. In the fact situation obtaining therein, the Court, however was of the opinion that there was no impediment in the way of awarding the relief. It is interesting to note that Pathak, J., as His Lordship then was, however was of the view: (SCC p. 450, para 13)*

"Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief."

The expression "ordinarily" must be understood given its due meaning. A useful reference in this behalf may be made to a four-Judge Bench decision of this Court in Jasbhai Motibhai Desai v. Roshan Kumar [(1976) 1 SCC 671] wherein it has been held: (SCC p. 682, para 35)

"35. The expression 'ordinarily' indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it."

33. *In J.N. Srivastava v. Union of India [(1998) 9 SCC 559 : 1998 SCC (L&S) 1251] again no law has been laid down in the fact situation obtaining therein. The Court held that the workmen had all along been ready and willing to work, the plea of "no work no pay" as prayed for should not be applied.*

34. *We may notice that in M.D., U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee [(1980) 3 SCC 459] and Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd. [(1984) 3 SCC 5 : 1984 SCC (L&S) 333] although an observation had been made to the effect that in a case where a breach of the provisions of Section 25-F has taken place, the workmen cannot be denied back wages to any extent, no law, which may be considered to be a binding precedent, has been laid down therein.*

35. *In PGI of Medical Education & Research v. Raj Kumar [(2001) 2 SCC 54 : 2001 SCC (L&S) 365] Banerjee, J., on the other hand, was of the opinion: (SCC p. 58, paras 11-12)*

"11. The learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this Court in PGI of M.E. & Research v. Vinod Krishan Sharma [(2001) 2 SCC 59] wherein this Court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that the decision in Soma case [PGI of M.E. & Research v. Soma, CA No. 12558 of 1996] has been noticed by this Court in Vinod Sharma case [(2001) 2 SCC 59] wherein this Court apropos the decision in Soma case [PGI of M.E. & Research v. Soma, CA No. 12558 of 1996] observed:

'A mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centred round its own facts cannot be a precedent in the present case which is based on its own facts.'

We also record our concurrence with the observations made therein.

12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct

payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. [(1979) 2 SCC 80 : 1979 SCC (L&S) 53 : (1979) 1 SCR 563] be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only."

45. *The Court, therefore, emphasised that while granting relief, application of mind on the part of the Industrial Court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.*

51. *The said decisions were, however, distinguished in Mohan Lal v. Bharat Electronics Ltd. [(1981) 3 SCC 225 : 1981 SCC (L&S) 478] Desai, J. was of the opinion: (SCC p. 238, para 17)*

"17. ... But there is a catena of decisions which rule that where the termination is illegal, especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case."

56. *A Division Bench of this Court in M.L. Binjolkar v. State of M.P. [(2005) 6 SCC 224 : 2005 SCC (L&S) 827 : JT (2005) 6 SC 461] referring to a large number of decisions, held: (SCC p. 228, para 6)*

"6[7]. ... The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

37. On the basis of the above, the compensation in certain cases is the solution for unjustified and premature termination of employment. The relief of compensation is more appropriate remedy in certain cases concerning the question of unlawful termination of service of an employee. Hence, even if the finding of the learned Labour Court is that termination is illegal, the learned Labour Court has the power to decline reinstatement if it is of the view that compensation will suffice.

38. This Court is of the view that since the petitioner was terminated in the year 2008 and the impugned award has been passed in the year 2019, the learned Labour Court has rightly adjudicated that the petitioner is not entitled to be reinstated alongwith consequential benefits, considering the elapse of time. Moreover, this Court also deems it apposite to grant the petitioner lumpsum compensation instead of reinstatement.

39. In view of the aforesaid discussions, this Court is of the view that the learned Labour Court has rightly exercised its jurisdiction by awarding lumpsum compensation in lieu of the reinstatement alongwith consequential benefits.

40. The writ of certiorari cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in the instant petition.

41. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the impugned award despite the fact that there are no such special circumstances that require the interference of this

Court and the learned Labour Award has passed the impugned award in accordance with law.The petitioner is not aggrieved by any such violation of his rights , which merits interference of this Court.

42. In view of the discussion in the foregoing paragraphs, this Court does not find any merits in the instant petition and is liable to be dismissed.

43. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

44. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 31, 2024
SV/db/ryp