



2024:DHC:1718



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

% **Reserved on: 18th December, 2023**
Pronounced on: 29th February, 2024

+ W.P.(C) 2252/2012 and CM APPL. No.4836/2012
SMT. SEEMA Petitioner
Through: Mr.Vinay Sabharwal, Advocate
versus
MANAGEMENT OF M/S COLONEL SECURITY CHAMBERS
..... Respondent
Through: Mr.Sushant Kumar, Advocate
(Through VC)

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition under Articles 226 and Article 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- “a) issue a writ of certiorari and/or any other appropriating writ, order or direction thereby to set side the impugned award dated 02.01.2010 passed in I.D. No.402/2004 by learned Labour Court No.VI, Karkardooma Courts, Delhi;*
b) summon the record of the Learned Labour Court I.D.No.402/2004 by learned Labour Court No.VI, Karkardooma Courts, Delhi;
c) Any other and further order that may deem fit and appropriate in this context may also kindly be passed.”

FACTUAL HISTORY

2. The petitioner was working with the respondent corporation and she did not come to office for few days and upon her returning on 28th

W.P.(C) 2252/2012

Page 1 of 13

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April 2004, petitioner's services with the respondent corporation were terminated.

3. Thereafter, the petitioner sent a legal notice to the respondent on 28th August 2004, demanding reinstatement, which the respondent denied vide letter dated 30th September 2004, and stated that the petitioner has herself left the job therefore, she cannot seek reinstatement and alleged that she abandonment her job.

4. Pursuant to which, the petitioner initiated an industrial dispute against her alleged wrongful termination and sought reinstatement along with consequential benefits. She has further claimed that she had been employed with the petitioner as a Lady Guard since 1st February 1994, and was later promoted to the position of Lady Supervisor. Moreover, her last drawn salary was Rs.5000/- per month.

5. Accordingly, the petitioner filed her claim petition wherein she denied any misconduct during her employment and refuted allegations of abandoning the services. She further contended that her termination was done wrongfully and violated various provisions of the Industrial Disputes Act, 1947 (hereinafter 'the Act') and other related rules after 28th April 2004. Hence, she sought reinstatement with continuity of service, full back wages, and other reliefs.

6. The respondent countered the aforesaid claim petition, stating that the petitioner abandoned her duties intentionally, which caused financial loss to the respondent. It further denied her claims of promotion and higher wages, asserting that petitioner worked as a peon/attendant at a lower pay.





7. During the process of the trial before the learned Labour Court, both the parties presented their evidence by way affidavits as well as cross-examination was conducted by both the parties. Thereafter, the impugned award was passed by the learned Labour Court on 2nd January, 2010 held that the petitioner was wrongfully terminated from her service and was awarded a lumpsum compensation of Rs. 1,20,000/-.

8. Aggrieved by the quantum of the lumpsum compensation, the petitioner has filed the instant petition.

PLEADINGS BEFORE THIS COURT

9. The instant writ petition was filed by the petitioner on 5th March, 2012 on the following grounds:

“..A) That the award passed by the Ld. Labour Court is bad in law and the same has been passed without considering the documents and materials placed on record and the same is not sustainable in the eyes of law and is liable to be set aside and quashed.

B) That the Ld. Trial Court deviated from the normal rule /relief to the workman / Petitioner of full backwages, reinstatement and continuity of services etc. without any basis, rhyme and reason.

C) That the Ld. Trial Court ought to have granted the petitioner full backwges, reinstatement, continuity of services etc.

D) That the denial of aforesaid normal relief to the petitioner by the Ld. Trial. Court is tantamount to rewarding the Respondent for its illegal/unjustified acts of termination of services of petitioner.

E) That even the amount of so called compensation as granted by the Ld. Labour Court is very meagre and inadequate. Even the full backwages payable to the Petitioner from the date of illegal termination of her services





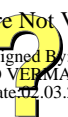
till the date of passing of award comes to Rs.1,20,000/- (approx.).

F) That despite holding the. termination of the service of the petitioner as illegal and unjustified the Ld. Labour Court did not consider that she is deemed to be in services of the respondent with full back wages and all consequential benefits, continuity of service etc..."

10. The counter affidavit/ reply to the instant writ petition has been filed by the respondent on 1st April, 2013. The relevant extract of the said counter affidavit is as follows:

"..2. Before setting out in detail, the various acts of suppression and tampering / mis-representation on behalf of the Petitioner, it is submitted that even otherwise on account of facts and circumstances Set out in detail in the present counter affidavit, the case of the Petitioner is wholly without merit, false, frivolous, concocted and also contradictory and not legally maintainable hence the same is liable to be dismissed. The petitioner is trying to harass the respondent through this cross writ as a writ to quash the impugned order has already been filed by the respondent against the petitioner titled as Management of M/s Colonel Security Chambers versus Seema & Anr W.P (C) No 2281/2010 which is still pending in this Hon'ble Court so, this attempt of the petitioner is completely a gross abuse of process of law as the petitioner has taken/laid down contradictory stands/ statements in the present writ as well as the writ filed by the respondent against the petitioner titled as M/s Management of M/s Colonel Security Chambers versus Seema & Anr W.P (C) No 2281/2010, hence the same is liable to be dismissed on this ground alone.

3. That, the respondent respectfully submits that the petitioner has taken vague, evasive and contradictory grounds. It is also pertinent to mention here that no substantive ground have been taken by the petitioner for why this petition should be allowed...."





11. The petitioner filed rejoinder on 5th July, 2013 in response to the aforesaid counter affidavit. The relevant extract of the same are as follows:

"...1. That the contents of para 1 of the, preliminary objections are wrong and denied. It is wrong and denied that the petitioner herein deserves no indulges whatsoever from this Hon'ble Court. It is further wrong and denied that this Hon'ble Court jurisdiction under Article 226 is discretionary jurisdiction and a petitioner who approaches this Hon'ble Court by suppressing material facts, selectively placing pleadings on record so as to defeat the rights of the others and prevent them from even being adjudicated upon, is, not entitled to any indulgence from this Hon'ble Court. In fact the petitioner has not concealed any fact in any manner whatsoever.

2. That the contents of para 2 of the preliminary objections are wrong and denied. It is wrong and denied that there are any acts of, suppression, and tampering/mis-representation on behalf of the, petitioner. It is wrong and denied that even otherwise on account of facts and circumstances set out in detail in the- present counter affidavit, the case of the petitioner is wholly without merit, false, frivolous, concocted and also, contradictory and not legally maintainable hence the same is liable to be dismissed. It is further wrong and denied that the petitioner is trying to harass the respondent through this cross writ as a writ to quash the impugned order has already been filed by. The respondent against the petitioner titled as Management of M/s Colonel Security Chambers versus Seema & Anr. W.P.,(C) No. 2281/2010 which is still pending in this Hon'ble Court so the attempt of the petitioner is completely a gross abuse of process of law as the petitioner - has taken /laid down contradictory stands/statements in the present writ as well as the writ filed by the respondent against the petitioner titled as M/s Management of M/s Colonel Security Chambers versus





Seema & Anr. W.P (C) No. 2281/2010. In fact this writ has been filed by petitioner for her due entitlement under law.

3. That the contents of para 3 of the preliminary objections are wrong and denied. It is wrong and denied that the petitioner has taken vague, evasive and contradictory grounds. It is further wrong and denied that no substantive ground have been taken by the petitioner as to why this petition should be allowed...”

SUBMISSIONS BEFORE THIS COURT

(on behalf of the petitioner)

12. Learned counsel for the petitioner submitted that the impugned award is legally flawed as it was made without proper consideration of the evidence and documentation provided. The award lacks sustainability under legal scrutiny and should be set- aside.

13. It is submitted that the learned Labour Court departed from the customary practice of awarding full back wages, reinstatement, and continuous service to the petitioner without providing any justifiable rationale or basis for such deviation.

14. It is submitted that the learned Labour Court should have granted the petitioner the relief of full back wages, reinstatement, and continuous service. The failure of the learned Labour Court in awarding the relief to the petitioner is in violation of her rights since her services were unjustly terminated by the petitioner.

15. It is submitted that the compensation awarded by the learned Labour Court is considered insufficient and inadequate as compared to the full back wages owed to the petitioner from the date of her illegal termination till the date of the impugned award.





16. It is submitted that despite holding the termination of services of the petitioner being illegal and unjustified, the learned Labour Court did not consider that she is presumed to be in employment of the respondent as well as entitled to full back wages and all the consequential benefits, continuity of service, etc.

17. In view of the submissions made above, it is submitted that the instant petition has merit and the same may be allowed by this Court.

(on behalf of the respondent)

18. *Per Contra*, learned counsel for the respondent vehemently opposed the contentions advanced by the learned counsel for the petitioner submitting to the effect that the petitioner does not merit any leniency from this Court as there is selective presentation of facts and an attempt to suppress material information, which undermines the rights of others. Such a behavior does not deserve indulgence from the writ court.

19. It is submitted that the petitioner's case lacks merit and is characterized as false, frivolous, and contradictory and the petitioner's attempt to file a cross-writ is nothing but a gross misuse of legal process, since a writ petition challenging the impugned award is already pending before this Court.

20. It is submitted that the petitioner's grounds are vague, evasive, and contradictory, lacking any substantive basis for the petition to be allowed. The petitioner has taken contradictory stances before both the learned Labour Court and this Court during proceedings since before the learned Labour Court the petitioner claimed only monetary compensation, however, later the petitioner expressed her willingness to rejoin.





21. It is submitted that the petitioner failed to file a replication or rejoinder to the respondent's detailed written statement before the learned Labour Court thereby admitting the management's stance.

22. It is submitted that the petitioner's claim before the learned Labour Court was based on false grounds, alleging illegal termination without valid reasons and victimization for legitimate demands without providing details or supporting documents.

23. In view of the aforesaid submissions, the learned counsel appearing on behalf of the respondent submitted that instant writ being without any merit is liable to be dismissed.

(on behalf of the petitioner- Rejoinder)

24. It is submitted that the petitioner denies the assertion that they deserve no indulgence from this Court and refutes the claim that they suppressed material facts or selectively placed pleadings before the Court. In this regard, it is submitted that the petitioner has not concealed any fact.

25. It is further submitted that the instant writ petition is not an abuse of process of law but a legitimate claim for their entitlement under the law.

26. It is submitted that the petitioner denies taking vague, evasive, or contradictory grounds and the substantive grounds have been presented for the instant petition. It is further submitted that the respondent's interpretation of their testimony and counter affidavit is wrongful.

27. It is further submitted that the petitioner did not file any false, concocted, or fabricated claim before the learned Labour Court and the





impugned award is legally sound and sustainable in terms of its observation that the petitioner's termination was unjust and illegal.

28. In view of the submissions made above, it is submitted that the instant petition has merit and the same may be allowed by this Court.

FINDINGS AND ANALYSIS

29. The matter was heard at length with arguments advanced by the learned counsels on both sides. This Court has also perused the entire material on record. This Court has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties and pleadings presented by the learned counsel of the parties.

30. It is the case of the petitioner that the petitioner has been inadequately compensated by the learned Labour Court. In rival contentions, the respondent submitted that the petitioner has set up a false and frivolous case hence, she is not entitled to any relief.

31. It is a settled position of 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.

32. This power is derived from Section 11-A of Industrial Disputes Act, 1947 (hereinafter 'the 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... "

33. It is a well settled principle that reinstatement in service is not a vested right and a reasonable compensation in lieu of the reinstatement may be granted by the Court after taking into consideration the facts and circumstances of the case. In case titled **Allahabad Bank and Ors. v. Krishan Pal Singh**¹ in the Hon'ble Supreme Court has held the following:

"8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of these proceedings, the respondent – workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the

¹ SLP(C) No. 19648/2019, decided on 20th September 2021



workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination / dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs.15 lakhs to the respondent, within a period of eight weeks from today. Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% per annum, till payment.”

34. 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.

35. Now this Court will advert to perusing the impugned award. The relevant extract of the award is as follows:

“RELIEF

19 In view of the above, I am of the opinion that the Workman has succeeded in proving her case. Though she has stated her salary to be Rs.5000/- in her statement of claim, but she has admitted to be Rs.3000/-in her cross-examination. Thus, taking into consideration the totality





of the circumstances, I think that a lump sum amount of Rs. 1,20,000/- towards her all claims will meet the ends of justice. Therefore, an award for an amount of Rs.1,20,000/- is passed in favour of the Workman and against the Management which be paid by the management within a period of one month of the publication of the award, failing which interest at the rate of 9% p.a. (nine percent) would be payable by the management to the workman. As far as the prayer with regard to reinstatement of the Workman concerned, since she has herself admitted in her cross- examination that she was not interested in reinstatement and filed the case for compensation, there is no order as to reinstatement..."

36. The learned Labour Court has held that since, the petitioner has herself admitted to the fact she is not seeking re-instatement instead she is seeking a compensation, therefore, the learned Labour Court awarded a lump sum amount of Rs.1,20,000/- towards all claims of the petitioner.

37. In view of the aforesaid dicta as well as the submissions advanced by the learned counsel appearing on behalf of the parties, this Court is of the view that since the petitioner was terminated in the year 2004 and the impugned award has been passed in the year 2010, the learned Labour Court has rightly exercised its discretion and adjudicated that the petitioner is entitled to compensation of Rs.1,20,000/-, hence there is no illegality which merits interference of this Court.

38. In light of justice and equity as well in consideration of the fact that the instant petition is pending since the year 2010, this Court deems it apposite to modify the lumpsum compensation granted to the petitioner. Therefore, this Court deems it appropriate to award a compensation of





2024:DHC:1718



Rs.2,15,000/- in lieu of reinstatement along with all consequential benefits awarded by the learned Labour Court to the respondent no.1.

39. Accordingly, the impugned award dated 2nd January, 2010 passed by the learned Labour Court VI, Karkardooma, Delhi in ID no. 402/04 the quantum of compensation to the petitioner stands modified. This Court awards Rs.2,15,000/- as compensation instead of Rs.1,25,000/- in lieu of reinstatement. It is directed that the aforesaid awarded compensation shall be paid to the petitioner within 6 weeks from today.

40. With the aforesaid observations, the present petition stands partially allowed and the same is disposed of along with the pending applications, if any.

41. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 29, 2024
sv/db/ryp

