

SANT RAJ & ANR.

O.P. SINGLA & ANR.

April 9, 1985

[D.A. DESAI AND RANGANATH MISRA, JJ.]

*Industrial Disputes Act, 1947, Section 25F read with section 2(oo)—Termination from service—Validity of—Termination if held illegal—Reinstatement follows—Inexpedient and improper to order reinstatement—Discretion of Court to grant compensation.*

*Income Tax Act, 1961, Section 89 and Income Tax Rules, 1962, Rule, 21(A) Compensation and back wages—Court ordered payment in lump sum—Relief of Income Tax—Power of Court.*

The services of the appellants-workmen who were employed as loaders in a foreign air-transport company was terminated by the respondent-employer. On a reference made by the Secretary (Labour) Delhi Administration the Labour Court held that the termination of services of the appellants constituted retrenchment within the meaning of s. 25F read with Section 2(oo) of the Industrial Disputes Act, 1947 and as the provisions of s. 25F have not been complied with the termination of service would be bad and illegal. It was further held that even where s. 25F of the Act is not complied with and the termination of service is illegal and invalid, there is certainly a discretion with the Labour Court whether to order reinstatement of the workmen or not. While quantifying the compensation, the Labour Court observed that the termination of services of the two workmen was bonafide and not a colourable exercise of power in accordance with the service rules and awarded one year's wages as compensation for the failure of the employer to comply with the requirements of s. 25F. The workmen appealed to this Court.

Partly allowing the Appeal.

HELD ; 1. Ordinarily, where the termination of service is found to be bad and illegal, in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full backwages. The Labour Court has however, the discretion to award compensation in respect of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper.

[625H; 626A-B]

A 2. Whenever it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and Justice and not according to private opinion, according to law and not humour. It must not be arbitrary vague and fanciful. [626D]

B *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.* [1979] 1 SCR 563, *M/s. Hindustan Steels Ltd., Rourkela v. A.K. Roy & Ors.* [1970] 3 SCR 343, *Sharp v. Wekfield*, [1891] AC 173 & *S.D. Jaisinghani v. Union of India & Ors.* [1967] 2 SCR 703, relied on.

C 3. Having regard to the facts and circumstances of the instant case, the reasons given by the Labour Court for declining to grant the normal relief of reinstatement are not tenable. The order of the Labour Court is, however, upheld. The award giving one year wages as compensation is modified to the effect that each appellant should be paid Rs, 2,00,000 as and by way of back-wages in lieu of relief of reinstatement. [626B-C]

D 4. The Labour Court while declining to grant the relief of reinstatement which should have ordinarily followed, consequent upon its finding that the termination of service was bad and illegal, in exercise of its discretion awarded one year's wages as compensation in lieu of reinstatement on the ground that 'the termination of service of each of the appellant was bonafide and not a colourable exercise of power in accordance with service rules'. There is thus an error apparent on the face of the record, inasmuch as if termination of service was according to service rules and was bonafide it could not be simultaneously held to be illegal and invalid. Therefore, the discretion was exercised on irrelevant and extraneous considerations or considerations not germane to the termination. [626F-H; 627A]

E 5. The appellants are entitled to relief under s. 89 of the Income Tax Act, 1961 read with Rule 21(A) of the Income Tax Rules, 1962 because compensation herein awarded includes salary which was in arrears for 12 years and is being paid in one lump sum under orders of Court. Respondent employer shall assist the appellants for obtaining the relief. [628E-F]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 650 of 1982.

G From the Award dated 6.3.1981 of the Labour Court Delhi in ICID No. 41 of 1979.

*P.N. Tewari and S.R. Srivastava* for the Appellants.

H *Dr. Y.S. Chitale, Ashok Grover and David Frey* for the Respondent.

The Judgment of the Court was delivered by

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DESAI, J, Secretary (Labour) Delhi Administration referred the following industrial dispute between the management of M/s Lufthansa German Airlines and its workmen Shri Sant Raj and Shri Itwari Lal Sherya for adjudication to the Labour Court at Delhi. It reads as under :

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“Whether the termination of service of S/Shri Sant Raj and Itwari Lal Sherya is illegal and/or unjustified and if so to what relief are they entitled ?”

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The Labour Court after an exhaustive and in-depth examination of rival contentions held that termination of services of the afore-mentioned two workmen constituted retrenchment within the meaning of Sec. 25F read with Sec. 2(00) of the Industrial Disputes Act, 1947 (‘Act’ for short) and as the provisions of Sec. 25F have not been complied with, the termination of service would be bad and illegal. The Labour Court then proceeded to examine whether the relief of reinstatement should be granted or compensation in lieu of reinstatement should be given. The Labour Court held that ‘even where Sec. 25F of the Industrial Disputes Act is not complied with and therefore the termination of service is illegal and invalid, there is certainly a discretion with the Labour Court whether to order reinstatement of the workman or not.’ We have our serious reservations about the statement of law but it is not necessary to deal with it in the present case because instead of granting reinstatement, we propose to award adequate compensation taking into account both the back-wages as well as compensation in lieu of reinstatement.

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The Labour Court while proceeding to quantify the compensation observed that ‘the termination of services of the two workmen was bonafide and not a colorable exercise of power in accordance with the service rules and then proceeded to award one year’s wages as compensation’ for the failure of the employer to comply with the requirements of provisions contained in Sec. 25F of the Act. The workmen have filed this appeal by special leave.

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Ordinarily where the termination of service is found to be

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A bad and illegal, in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full backwages. (See *Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.*<sup>(1)</sup>).  
 B The Labour Court has, however, the discretion to award compensation instead of reinstatement if the circumstances of a particular case are unusual or exceptional so as to make reinstatement inexpedient or improper. (See *M/s Hindustan Steels Ltd., Rourkela v. A.K. Roy & Ors.*<sup>(2)</sup>).

C In the present case, the Labour Court having held that the termination of services of the appellants would constitute retrenchment and as the pre-requisite for a valid retrenchment having not been satisfied, the termination of service was bad, yet in the facts of the case in his discretion declined to grant the relief of reinstatement. Whenever, it is said that something has to be done within the discretion of the authority then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself. (See *Sharp v. Wekfield*<sup>(3)</sup>).  
 D Discretion means sound discretion guided by law. It must be governed by rule, not by humour, it must not be arbitrary, vague and fanciful. (See *S.D. Jaisinghani v. Union of India & Ors.*<sup>(4)</sup>).

F The Labour Court while declining to grant the relief of reinstatement which should have ordinarily followed, consequent upon its finding that the termination of service was bad and illegal, in exercise of its discretion awarded one year's wages as compensation in lieu of reinstatement on the ground that 'the termination of service of each of the appellant was bonafide and not a clo-  
 G rable exercise of power in accordance with service rules.' There is thus an error apparent on the face of the record of the case inasmuch as if the termination of service was according to service

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(1) [1979] 1 SCR 563.

(2) [1970] 3 S.C.R. 343.

(3) [1891] A.C. 173.

(4) [1967] 2 S.C.R. 703.

rules and was bonafide it could not be simultaneously held to be illegal and invalid. Therefore the discretion was exercised on irrelevant and extraneous considerations or considerations not germane to the determination. As a necessary corollary, we would have granted the normal relief of reinstatement.

Dr. Chitley, learned counsel who appeared for the respondents attempted to take us through the evidence with a view to persuading us that the employer even if it acted contrary to law, should not be burdened with reinstatement because it had lost confidence in the appellants. The employer is a foreign air-transport company. The workmen were loaders posted at Delhi Airport. In this far-fetched hierarchical relationship, loss of confidence if it is to be considered a relevant factor would have hardly impressed us. However, as the workmen are out of job from August 30, 1973 i.e. roughly for a period of 12 years, it is in their own interest, that instead of reinstatement in service under an unwilling if not a hostile employer, adequate compensation would meet the ends of justice. Therefore, in the special facts and circumstances of this case, though disagreeing with the reasons given by the Labour Court for declining to grant the normal relief of reinstatement, we uphold the same but the meagre compensation awarded by the Labour Court namely one year's wages requires to be rdequately and properly modified.

Dr. Chiley gave us information about the last wages drawn by each of the workmen. That does not take care of over-time allowance or bonus or other benefits that they enjoy. Roughly, the monthly pay packet of each workman appears to be around Rs. 1,000. Each one of them was a loader which means doing manual job. Each one of them is entitled to backwages in full for a period of 12 years. Each one was therefore entitled to get Rs. 1,50,000 towards back-wages. Adding to it the compensation in lieu of reinstatement in the amount of Rs. 50,000, we are of the opinion that a total compensation in the amount of Rs. 2,00,000 to each appellant would meet the ends of justice.

Before we conclude this judgment, we would like to make it abundantly clear that the compensation of Rs. 2,00,000 awarded to each appellant includes backwages for a period of

A 12 years. Now that the amount is being paid in one lump sum,  
it is likely that the employer may take recourse to Sec. 192 of the  
Income Tax Act, 1961 which provides that when any person res-  
ponsible for paying any income chargeable under the head 'Sala-  
ries' shall, at the time of payment, deduct income tax on the  
B amount payable at the average rate of income-tax computed on  
the basis of the rates in force for the financial year in which the  
payment is made, on the estimated income of the assessee under  
this head for that financial year. If therefore the employer pro-  
ceeds to deduct the income-tax as provided by Sec. 192, we would  
like to make it abundantly clear that each appellant would be  
entitled to the relief under Sec. 89 of the Income Tax Act which  
C provides that where, by reason of any portion of assessee's salary  
being paid in arrears or in advance or by-reason of his having  
received in any one financial year salary for more than 12 months  
or a payment which under the provisions of clause (3) of Section  
17 is a profit in lieu of salary, his income is assessed at a rate  
higher than that it would otherwise have been assessed, the  
D Income-tax Officer shall on an application made to him in this  
behalf grant such relief as may be prescribed. The prescribed  
relief is set out in Rule 21(A) of the Income-tax Rules. Both the  
appellants are entitled to the relief under Sec. 89 because com-  
pensation herein awarded includes salary which was in arrears  
E for 12 years and it is being paid in one lump sum under the orders  
of this Court. Therefore, the salary has to be spread over for a  
period of 12 years as also the compensation in lieu of reinstatement  
and the relief should be given as provided by Sec. 89 of the  
Income-tax Act read with Rule 21(A) of the Income-tax Rules.  
Both the appellants are entitled to the same. If any application  
F is necessary to be made, the same may be made to the compe-  
tent authority and the respondent-employer shall assist the appel-  
lants in each case for obtaining the relief.

G When the hearing concluded and we indicated that we were  
inclined to award compensation for backwages and in lieu of  
reinstatement, we requested Shri S.R. Srivastava, learned counsel  
for the appellants to give us in a tabulated form the compensation  
to which each appellant would be entitled with a spread over from  
the date of the order of termination of service till the end of the  
present year. The tabulations have been supplied in respect of  
H each of the appellants. We have gone through the tabulations and

we are satisfied that they represent the correct state of affairs and they are taken on record and are being treated as part of this judgment.

Accordingly, this appeal is partly allowed and the award giving one year's wages as compensation is modified to the effect that each appellant should be paid Rs. 2,00,000 as and by way of backwages and in lieu of relief of reinstatement. As we have awarded adequate compensation, it is not necessary to award costs. We order accordingly.

A.P.J.

*Appeal partly allowed.*

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