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

Date of decision: 20th January, 2022

\+ **W.P.(C) 2359/2020**

MS. VANDANA ..... Petitioner

Through: Ms. K.B. Hina, Advocate.

versus

M/S HBL GLOBEL PVT. LTD. ..... Respondent

Through: Ms. Romila Joshi, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.

2. The present petition has been filed challenging the impugned Award dated 15th October, 2019 passed by the Labour Court in ***LC/DID No.408/16*** titled ***Ms. Vandana v. M/s. HBL Globel Pvt. Ltd.*** By the impugned Award, the Petitioner-Workman (*hereinafter 'Petitioner'*) who had challenged the termination of her services was awarded a sum of Rs.1,02,420/-, instead of reinstatement in service with full back wages and continuity of service along with all the consequential benefits, as prayed for in the claim petition.

3. The background of the present petition is that the Petitioner was employed as a Tele-caller on 13th August, 2008 with the Respondent-Management (*hereinafter 'Management'*). Till 2012, she had rendered her services regularly. However, due to medical issues arising out of miscarriage which she is stated to have undergone in June, 2012, she had remained absent from work. This resulted in the Management terminating her

services. However, upon filing a complaint with the Labour Commissioner, she was taken back into service. It was the case of the Petitioner that post her termination in 2012, when she joined back, the Management started sending various warning letters to her, and she was finally terminated on 30th December, 2014. The said termination was challenged by the Petitioner before the Labour Court, wherein she prayed for reinstatement with continuity of service and full back wages along with all consequential benefits. The following issues were framed in the said proceedings before the Labour Court:

> *"1. Whether the claimant/ workman is not a workman as defined under Section 2(s) of the industrial Disputes Act, 1947 (as amended upto date)? O.P.M.*
>
> *2. Whether the performance of the claimant/ workman was not up to the mark and she was asked to improve her performance and she was issued various warning letters by the management but the claimant did not improve her performance despite various letters of the management to this effect, if so, its effect? O.P.M.*
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> *3. Whether the claimant/ workman was directed by the management to show quantitative and qualitative improvement in her performance vide its letters but the claimant/ workman failed to improve rather she indulged into the acts of indiscipline and misconduct during the course of her employment and discharge of her duty and started absenting from quality training session and refused to abide by the directions given to her by her seniors as alleged by the management, if so, its effect? O.P.M.*
>
> *4. Whether the claimant was found to be unprofessional and callous while making dialer calls to the customer and was found busy chatting and interacting with her colleagues and made a*

disrespectful comment about a deceased customer, if so, its effect? O.P.M.

5. Whether the claimant wrote false and frivolous letters making baseless allegations against the various employees of the management to the management as alleged by the management, if so, its effect? O.P.M.

6. Whether the claimant was informed by the management vide its letter dated 26.12.2014 that her services shall be terminated w.e.f. 31.12.2014 and subsequently one month salary amounting to Rs. 13100/- was credited in to the bank account of the claimant towards notice pay as per the terms and conditions of employment as claimed by the management? O.P.M.

7. Whether the full and final settlement amount of the claimant was credited into her account maintained with HDFC Bank on 02.01.2015 and the was intimated to the claimant vide letter dated 03.01.2015 and further on 07.01.2015 an amount of Rs.26,180/- was also credited Into the account of the claimant towards the gratuity payable to her and she was informed regarding the same through letter dated 08.01.2015, if so, its effect? O.P.M.

8. Whether the services of the workman were terminated by the management illegally and unjustifiably as claimed by the workman? O.P.W.

9. Whether the workman is entitled to the relief claimed in the statement of claim? O.P.W.

10. Relief."

4. The Labour Court held in favour of the Petitioner on most issues. The termination was held to be illegal, however, only compensation was awarded in lieu of reinstatement in service. The Management has paid the sum awarded. But the Petitioner has challenged the award and prays that she

ought to be reinstated.

Submissions of the Parties:

5. Ms. K.B. Hina, appearing as Legal Aid counsel on behalf of the Petitioner/Workman, submits that the Labour Court has completely erred in not granting reinstatement in service along with full back wages. She submits that the conclusion of the Labour Court clearly shows that the Petitioner was victimized and harassed unnecessarily by the Management. Since there as was no specific allegation of misbehaviour or insubordination and the termination of service was held to be illegal, following the judgment of the Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors. [Civil Appeal No.6767 of 2013 decided on 12th August, 2013]***, reinstatement with back wages ought to have been granted. Reliance is placed upon paragraph 33 of the said judgment, which has been extracted below:

> ***"33.*** *The propositions which can be culled out from the aforementioned judgments are:*
> *i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
> *ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
> *iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully*

employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power Under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by

the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of

> *three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."*

6. On the other hand, Ms. Romila Joshi, ld. Counsel appearing for the Management, submits that the Petitioner/Workman had received various letters showing that she was under-performing, and the said letters were placed on record before the Labour Court. However, the same have been ignored by simply stating that no specific incident of indiscipline and misconduct was pointed out by the Management. She emphasises the fact that the letters were written way back in 2009, even before the Petitioner's alleged miscarriage is stated to have taken place, for which no medical records have been filed. Thus, it is wrong to suggest that the Management had a grievance against the Petitioner, only due to her absence from work at the time of her miscarriage. In fact, the performance of the Petitioner was not satisfactory, which is evident from the letters dated 1st April, 2009, 24th August, 2009, 20th October, 2009, 3rd December, 2009 and 1st April, 2010. In this letter, the grade and the compensation package *qua* the Petitioner was restructured, and it was clearly intimated to her that her performance was not satisfactory. On the basis of these letters which went on to be addressed to the Petitioner till the years 2012-2014, the Management claims that the services of the Petitioner were not satisfactory and the termination of her services was legal.

7. Ms. Joshi, ld. Counsel, further argues that in every case where the termination of service is held to be illegal, it is not necessary that reinstatement in service has to be granted automatically. Reliance is placed

upon the judgement of the Supreme Court in ***Municipal Council, Sujanpur v. Surinder Kumar [Civil Appeal No.2474/2006 decided on 5th May, 2006]*** as also the judgment of the Delhi High Court in ***Vinod Kumar and Ors. v. Salwan Pubic School & Ors. [2014 LLR 239]***. In conclusion, she submits that the Labour Court has judicially calculated the compensation payable in terms of Section 25(F) of the Industrial Disputes Act, 1947. Hence, the impugned Award deserves no interference.

Analysis & Findings:

8. Heard ld. Counsels for the parties. Admittedly, there is enormous bitterness between the Petitioner/Workman and the Respondent/Management. The Petitioner was terminated way back in the year 2014 and by that time, she had rendered six years of service. Even if the period between the years 2008 to 2012 is considered, she had rendered uninterrupted service to the Management for a period of four years.

9. A perusal of the record shows that sometime during the year 2012, due to various reasons which need not be gone into in the present petition, the Petitioner had absented herself from work, and the first round of dispute had taken place between the Management and the Petitioner. Thereafter, she was then reinstated with the Management and continued to work with the Management till 2014. However, in respect of this period, a large number of letters have been placed on record by the Management which purportedly allege that the performance of the Petitioner was not satisfactory.

10. After perusing the evidence which was led before it, the labour court gave the following findings on each of the issues:

Issue No.1

In respect of the question as to whether the Petitioner was a Workman under

Section 2(s) of the Industrial Disputes Act, 1947, the Labour Court held the Petitioner to be a Workman, as defined under the said provision. Thus, Issue No.1 was decided in favour of the Petitioner and against the Management.

Issue No.2

In respect of the issue as to the performance of the Petitioner not being up to the mark and the warning letters which were served upon her for improving her performance, the Labour Court came to the conclusion that the Management failed to establish that the Petitioner was under-performing. It appeared to the labour court that the intention of the Management was to somehow get rid of the Petitioner. Thus, Issue No.2 was decided in favour of the Petitioner and against the Management.

Issue No.3

In respect of the issue as to whether she was absenting herself from quality improvement training sessions wrongfully and was guilty of indiscipline and misconduct, the Labour Court held that the Management could not establish the same. Further, the Petitioner had a valid reason not to attend the quality improvement training sessions as she had an infant daughter. Thus, Issue No.3 was decided in favour of the Petitioner and against the Management.

Issue No.4

In respect of the issue as to the Petitioner's unprofessional and callous attitude in her interaction with her colleagues and customers, the Labour Court held that the Management did not lead any evidence of customers or colleagues to establish the same. Thus, Issue No.4 was decided in favour of the Petitioner and against the Management.

Issue No.5

In respect of the allegations raised by the Management that the Petitioner

had written false and frivolous letters, making baseless allegations against the Management, after examining some of the said letters on record, the Labour Court came to the conclusion that insofar as supply of PCs and the software is concerned, it was clear that the Petitioner was not raising any false or frivolous allegations. Thus, Issue No.5 was decided in favour of the Petitioner and against the Management.

Issue Nos. 6 and 7

These two issues were taken up together. In respect of these two issues, the Management relied upon various letters stated to be written by them to the Petitioner. The Petitioner denied the receipt of the said letters. However, the Labour Court held that the said letters were received by the Petitioner inasmuch as it was sent properly, and the proof of dispatch was also placed on record. Thus, these two issues were disposed of in the above terms.

Issue No.8

On the question of illegal termination which was considered as Issue No.8, the Labour Court holds that after she was taken back in 2012, various communications were addressed to her. However, there was no specific incident of insubordination or unsatisfactory performance which was pointed out by the Management. No evidence of colleagues or customers was produced to establish the said allegations. Thus, Issue No.8 was decided in favour of the Petitioner and against the Management. The Labour Court's conclusion on this issue is crucial, and is set out below:

> *"**Issue no. 8. Whether the services of the workman were terminated by the management illegally and unjustifiably as claimed by the workman? O.P.W.***
>
> *The onus to prove this issue was upon the claimant/ worklady. From the pleadings as well as the*

evidence adduced by the parties, it is an admitted position on record that the services of the claimant were dispensed with by the management earlier also in the year 2012, when she had returned back for her duties in the month of August 2012 after availing medical leaves and thereafter when she had filed the case before the Labour Commissioner, then only the management had taken her back on job.

It shall be interesting to see that after taking her back on job, frequency of management's issuing her so called warning letters asking the claimant to improve her quality and quantity of performance had increased enormously. It shall be further pertinent to note here that in none of the aforesaid communication as placed on record, neither any specific incident of her insubordination nor claimant's unsatisfactory performance in discharge of her official duties or the manner and mode of her callous attitude in discharge of her duties was mentioned or explained, except one incident of her leaving a caller online or that of making a comment about one of the deceased customers.

However, in context of these incidents as well, neither any customer nor any co-employee of the claimant was examined by the management to prove the same on record even by preponderance of probabilities.

Furthermore, though management had talked about the conduct of quality improvement training sessions for the claimant and claimant had also admitted about attending those sessions in her communication Mark B. However, no performance appraisal report of the claimant was ever communicated to her, nor it was placed on record in the present case to show any decline in her performance.

For a prudent mind, it is not very difficult to

understand the plight of an employee who had been taken back on the job by the management under certain compulsions and the anxiety of the management in getting rid of such an employee at the earliest opportunity available to it.

Although the management could not be held to have indulged into any illegal act while dispensing with the services of the claimant, however, straightaway dispensing with her services without even chargesheeting her or conducting or holding any inquiry against her for her alleged misconduct and gross insubordination could not be held to be justified either.

Therefore, this issue is answered in affirmative while holding the termination of the services of the claimant by the management to be unjustified amounting to her retrenchment and decided in favour of the claimant and against the management."

Issue No.9

On this issue as to whether the Petitioner is entitled to the relief as claimed, the Labour Court arrived at the conclusion that both the parties are extremely animus towards each other. It would not be in the fitness of things to allow the reinstatement in service, as they do not enjoy a good relationship. Considering the bitterness in the relationship between the parties, Issue No.9 was decided in favour of the Petitioner and against the Management. However, instead of reinstatement in service, the Workman was held to be entitled to compensation as provided under Section 25F of the Industrial Disputes Act, 1947.

Relief awarded by the Labour Court:

11. Considering the facts and circumstances of the case, the Labour Court found it appropriate to grant relief to the Petitioner/Workman, in the

following manner:

> *"In view of my findings to the above issues, it is categorically clear that the claimant had joined the services of the management on 13.08.2008 and had continued to work till 30.12.2014 because once the management had taken her back in its employment in the year 2012, that would have amounted to continued and uninterrupted service of the claimant with the management. As such, the claimant was entitled to compensation under Section 25(F) for her services rendered for a period of 6 years which fact the management had also recognized in the present case by paying her an amount of Rs. 26,180/- towards her gratuity.*
>
> *Therefore, an award for the following reliefs is passed in favour of the claimant and against the management:-*
>
> ***1. an amount of Rs. 13,100/- is awarded in favour of the claimant for her one month's notice pay (the said amount already stands paid by the management);***
>
> ***2. the gratuity for the period of six years calculated at the rate of three month's salary after deducting the amount already paid by the management amounting to Rs. 13,120/- is also awarded in favour of the claimant (Rs.13,100 X 3 = Rs. 39,300 - Rs. 26180 = Rs.13,120/-);***
>
> ***3. the retrenchment compensation @ 15 days average salary for each completed year of continuous service amounting Rs. 39,300/- is also awarded in favour of the claimant;***
>
> ***4. compensation towards incentive, overtime and bonus as management had failed to prove her under performance on record for***

> ***the relevant period, amounting to Rs. 50,000/- is also awarded. In favour of the claimant;***
>
> *Accordingly, an award for the amount of Rs.1,02,420/- is passed in favour of the claimant and against the management and management is directed to pay the above said amount to the claimant within 30 days of publication of this award, failing which the above said amount shall also be carrying an interest @ 8 percent per annum till the date of its realization. Statement of claim as filed by the claimant is allowed and disposed of accordingly. Copy of the award be sent to the Labour Commissioner for publication. Case file be consigned to record room."*

12. The Management has honoured the impugned Award dated 15th October, 2019 and has admittedly paid the entire awarded sum. The Petitioner, however, has preferred the present petition challenging the relief which was granted by the Labour Court. From the findings discussed above, the labour Court, has held that the termination of the Petitioner's services was illegal and there was a concerted effort made to somehow ensure that she can be removed from service. This finding of the Labour Court has been clearly held in answer to Issue No.8, and is not under challenge. Thus, the illegality of the termination not being under challenge, the only question which this Court is primarily considering is whether the compensation awarded to the Petitioner is just and reasonable, or whether the Petitioner is entitled to the relief of reinstatement in service with back wages as sought in the claim petition.

13. The judgments in ***Municipal Council, Sujanpur (supra)*** as also ***Vijay Kumar (supra)*** cited by the Management clearly hold that reinstatement in service is not automatic, whenever the termination of service is held to be

illegal. In ***Deepali Gundu Surwase (supra)***, the Supreme Court observed that in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule. The question of back wages, however, has to be considered depending on the length of service, nature of misconduct, etc.

14. However, in its recent decisions, the Supreme Court has held that reinstatement in service need not be granted in all cases of illegal termination of service, and reasonable compensation in lieu of reinstatement, may be granted by the Court, depending upon the facts and circumstances of each case.

15. In ***Allahabad Bank and Ors. v. Krishan Pal Singh (SLP(C) No. 19648/2019, decided on 20th September 2021),*** held as under:

> *"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 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."*

16. Thus, the Supreme Court has clearly recognised the fact that reinstatement is not an automatic consequence of wrongful termination, especially when the Workman has, during the pendency of litigation, not performed any services with the Management. The Supreme Court has, accordingly, awarded lump sum compensation in lieu of reinstatement.

17. Even in ***Ranbir Singh v. Executive Eng. P.W.D. (Civil Appeal No. 4483/2010, decided on September 2, 2021)***, wherein it was observed as under:

> *"6. ….In other words, we find that reinstatement cannot be automatic, and the transgression of Section 25F being established, suitable compensation would be the appropriate remedy. 7. In such circumstance, noticing that, though the appellant was reinstated after the award of the Labour Court in 2006, the appellant has not been working since 2009 following the impugned order, and also taking note of the fact that the appellant was, in all likelihood, employed otherwise, also the interest of justice would be best subserved with modifying the impugned order and directing that in place of Rs. 25000/- (Rupees Twenty Five Thousand), as lumpsum compensation, appellant be paid Rs.3.25 lakhs (Rupees Three Lakhs and Twenty Five Thousand), as compensation, taking into consideration also the fact that the appellant had already been paid Rs. 25000/- (Rupees Twenty Five Thousand) as compensation."*

18. Similar is the view of the Supreme Court in ***Ram Manohar Lohia Joint Hospital and Ors. v. Munna Prasad Saini and Ors. [AIR 2021 SC***

4400] as also in ***Madhya Bharat Gramin Bank v. Panchamlal Yadav [2021 LLR 681]***.

19. Therefore, in view of the recent jurisprudence which has evolved *qua* the award of compensation in lieu of reinstatement in cases of illegal termination of services, this Court is not inclined to award reinstatement with back wages and continuity of service in the present case.

20. However, this Court also cannot ignore the fact that the Petitioner had rendered four years of continuous service and two years thereafter, till she was terminated. Her last drawn salary was Rs.13,100/- per month. Considering that, the Petitioner rendered services with the Management since 2008 to 2014 i.e., for a period of six years, the Labour Court has strictly calculated her compensation in terms of 15 days average salary for each completed year of continuous service, amounting to Rs.39,300/-. The bonus and other compensation have been valued at Rs.50,000/-. She also had complained of ill treatment by the Management who continued to serve several letters upon her. Thus, in the absence of any specific incident where either misconduct, misbehaviour or insubordination was recorded, the termination of service has also been held to be illegal.

21. The impugned Award in the present case was rendered in 2019 i.e., after a period of five years from the termination of service. During this entire period, the Petitioner has pursued the litigation against the Management diligently. However, the lump sum compensation that has been awarded by the Labour Court is only to the tune of Rs.1,02,420/-. Considering that she was working as a tele-caller and she also had joined back her duties by the time she was terminated, this Court is of the opinion that it would be reasonable, in the facts and circumstances of the present

case, to award a further compensation of Rs.1 lakh to the Petitioner, along with Rs.50,000/- as litigation expenses.

22. Let the said amount of Rs. 1,50,000/- be paid by the Respondent/Management to the Petitioner/Workman, within eight weeks, failing which, the said amount would be payable along simple interest at 7% per annum.

23. With the above observations, the present petition along with all pending applications, is disposed of. The impugned Award dated 15th October, 2019 stands modified in the above terms.

PRATHIBA M. SINGH, J

JANUARY 20, 2022
Rahul/A.S
(corrected & released on 24th January, 2022)