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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th October, 2021
+ **W.P.(C) 8297/2016 and CM APPL. 867/2020**
M/S HINDUSTAN ANTIBIOTICS LIMITED Petitioner
Through: Mr. D. Roy Chaudhary, Sr. Advocate
with Mr. Debasish Moitra, Advocate.
versus
B.N. SINGH Respondent
Through: Mr. B. N. Singh, in person.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by M/s Hindustan Antibiotics Limited (*hereinafter, 'Management'*) challenging various orders passed by the Presiding Officer, Labour Court – XVII, Karkardooma Courts, Delhi (*hereinafter, 'Labour Court'*) in **LIR No. 207/16/10 (ID No. 236/10)**, finally culminating into impugned Award dated 2nd February, 2016. This petition seeks quashing of the said Award and various orders passed by the Labour Court, and also seeks remand of the matter back to the Labour Court to decide afresh after hearing the Management's case.
3. The brief background of the matter is that the Respondent- Workman was appointed as a Medical Representative in the office of the Management in Patna. He worked with the Management until 1996. On 14th November 1996, a chargesheet was issued against him by the Management, on the ground that he had falsely claimed Leave Travel Concession (*hereinafter, 'LTC'*) by filing a receipt of travel from Delhi to Patna and back, amounting to Rs. 6,000/-. According to the Management, he had not undertaken the

said journey. and had not obtained approval, in respect thereof, of the Management/ competent authority for availing the LTC. In the chargesheet which was issued, an enquiry was conducted and a report dated 10th August, 1999, was submitted by the then enquiry officer. As per the said report, the Workman was found guilty of the charges levelled – i.e., ‘Fraud or Dishonesty in connection with the company’s business or property’. He was then terminated vide order dated 28th August, 2000 passed by the Disciplinary Authority, which concurred with the findings of the first enquiry officer. An appeal was preferred by the Workman before the Appellate Authority, which was dismissed vide order dated 9th November 2000. The Workman then filed a writ petition being **CWP 3395/2001**, seeking quashing of the said termination order dated 28th August 2000, as well as the enquiry report against him. The High Court, vide order dated 6th August 2002, recorded the statement of the Management that a new enquiry officer would be appointed in the matter, and accordingly ordered for the Workman to be reinstated into service, until the fresh enquiry was completed. The writ petition was disposed of with the said direction. The order of the High Court reads:

“Mr. Savla counsel for the respondent has contended that he has sought instructions and new enquiry officer shall be appointed. In view of the statement of counsel for the respondent, impugned order dated 28.8.2000, is quashed. The petitioner be reinstated in the service. However, the petitioner will not claim any back wages till the enquiry is completed. It is also open to the respondent to take whatever action that is contemplated under their own service rules and regulations.”

*With these directions, writ petition as well as application stand disposed of.
Dasti.”*

4. The Workman was then reinstated into service on 29th August, 2002, and he joined the services of the Management at the Delhi branch on 5th September 2002. On 30th October, 2002, a fresh chargesheet was issued against the Workman, and an independent domestic enquiry was again conducted. Upon the completion of the said enquiry, a report dated 17th January, 2007 was submitted by the enquiry officer to the Management, vide which he was once again found guilty of all the charges levelled in respect of the LTC availed by him. On 8th July 2008, a showcause notice was issued against the Workman, enclosing a copy of the said enquiry report, to which he had submitted a reply. Thereafter, vide letter dated 14th October 2009, the Workman was terminated by the Disciplinary Authority/ Competent Authority, which concurred with the findings of the second enquiry officer.

5. This termination letter dated 14th October 2009, was challenged by the Workman by invoking remedies under the Industrial Disputes Act, 1947 (*hereinafter*, “Act”), i.e., by filing a statement of claim before the Conciliation Officer under the Act. The conciliation proceedings failed and accordingly, vide order dated 6th September 2010, the GNCTD referred the case for adjudication to the Labour Court. Before the Labour Court, the Workman filed his statement of claim on 17th January 2011, and the Management filed its written statement on 19th March 2011. An Authorized Representative (*hereinafter*, ‘AR’) was appointed to represent the Management as the Workman objected to the appearance of an Advocate on behalf of the Management under Section 36 of the Act, which was upheld by

the Labour Court vide order dated 15th October 2011.

6. According to Id. Counsel for the Management, The AR who was representing the Management took voluntary retirement, and another officer was appointed as the AR. However, the said officer was also subsequently transferred to Chandigarh. Upon the ARs having superannuated or transferred, the Management is stated to have lost track of the instant case, and none appeared on behalf of the Management for leading evidence before the Labour Court, although the Written Statement had already been filed.

7. The Labour Court, vide order dated 23rd July 2012 framed the following issue in the matter as a preliminary issue:

“(i) Whether the enquiry conducted by the management against the workman was in violation of principles of natural justice? OPW”

8. Vide order dated 10th July 2015, the Labour Court decided the said preliminary issue on the validity of the enquiry and concluded that the said enquiry was contrary to the principles of natural justice as the enquiry officer appointed by the Competent Authority of the Management had not considered the reports of the handwriting experts produced by the Workman, in its report. The said order was passed *ex-parte*. The Labour Court held as under:

“14. In view of the above discussion, the enquiry issue is decided in favour of the claimant and against management. The enquiry was not as per the principles of natural justice. The enquiry officer did not consider, at all, the handwriting expert reports produced by the claimant.”

9. Subsequently, the final Award dated 2nd February 2016 was passed by

the Labour Court, which noted that the Management did not examine a single witness or produce any document to prove the misconduct which was alleged against the Workman, in the proceedings. The Labour Court, vide this Award, directed reinstatement of the Workman, with continuity of service, as also payment of back wages, in the following terms:

“ Relief

14. *First time, the claimant was terminated in October, 2000 and he was reinstated only on 29.08.2002 after first enquiry was quashed by the Hon'ble High Court. He was issued second chargesheet dated 30.10.2002 and was suspended on the same day. Suspension was revoked on 10.08.2004. Second time, his services were terminated on 14.10.2009 and the claimant is still under termination. He had got subsistence allowance during suspension period i.e. from 30.10.2002 to 10.08.2004. The management is a government undertaking. The main allegation against the claimant was that he had sent a bill of Rs. 6,000/- for reimbursement as expenses for LTC from Delhi to Patna and vice-versa. That amount was not sanctioned to him. So, the claimant had only attempted to get Rs. 6,000/- as LTC expenses. That allegation went unproved. So, the management is directed to pay 100% back wages to the claimant from the date of first termination in October, 2000 to first reinstatement on 29.08.2002. The management is further directed to pay the remaining salary i.e. total salary minus subsistence allowance from 30.10.2002 to 10.08.2004. The management is further directed to pay 100% back wages from 15.10.2009 onwards. The management is also directed to reinstate the claimant with continuity in service within a month from the date of publication of the award failing which it shall be liable to pay interest @9 per cent per annum on above amount from today till its realization. Parties to bear*

*their own costs. Award is passed accordingly.
Reference is answered accordingly.”*

10. It is this Award that is assailed in the present petition.

11. Mr. D. Roy Chaudhary, Id. Sr. Counsel assisted by Mr. Debasish Moitra, Id. Counsel, appearing for the Management, has made three broad submissions:

- i. The Labour Court did not have jurisdiction to hear and adjudicate the Claim of the Workman, as the appropriate Government in the present case is the Central Government. The Management is a Central Government entity, the 100% shareholding of which, is owned by the President of India.
- ii. Both the independent domestic enquiry reports arrived at a clear conclusion that there was fabrication of the bill of Rs.6,000/-, which was availed of as LTC by the Workman, showing travel from Delhi to Patna and back. This fabrication has led to a loss of confidence in the Workman, and accordingly the Management cannot be forced to retain him.
- iii. Finally, the judgment of the Supreme Court in ***OP Bhandari v. Indian Tourism Development Corporation Ltd. and ors. (1986) 4 SCC 337***, is relied upon to canvass the proposition that when there is a loss of confidence of this nature, and no purpose would have been served by reinstatement, a lump sum compensation equivalent to the salary of 3.33 years (including allowances) ought to be paid, and reinstatement with full back wages and continuity of service need not be granted.

12. The Workman- Mr. B.N. Singh, appears in person and submits the following:

- i. The Management did not lead any evidence in the matter throughout the proceedings before the Labour Court.
- ii. On the aspect of jurisdiction, the Workman submits that he had initially approached the Ministry of Labour and Employment, Government of India. which informed him on 12th November, 2009, that the Central Government is not the appropriate Government in the dispute raised by him. Accordingly, he was left with no option but to approach the GNCTD, and seek a reference in respect of his claim thereof. It is under these circumstances that the Labour Court has exercised jurisdiction of his claim. Moreover, the Management had submitted to the jurisdiction of the Labour Court when it filed its Written Statement, and accordingly cannot dispute the same at this stage.
- iii. There need not be any loss of confidence in respect of him, as he has rendered services with the Management since 1982.
- iv. He is entitled to approximately Rs. 50,00,000/- in terms of the Labour Court award.

13. In Rejoinder, Id. Sr. counsel for the Management submits that the Management is a company which was under liquidation and had become a sick company, although, recent attempts have been made to revive the same. The Workman disputes this position and submits that large amounts of funds have already been invested by the Central Government into this company, even to the tune of more than Rs.300 Crores.

14. Heard Id. Senior Counsel for the Management and the Respondent-

Workman, who is appearing in person, and perused the record.

15. A few facts that are important to be noticed are:

- The Management was served in the matter before the Labour Court i.e., **ID 236/10**, and the Written Statement of the Management was also filed, however none appeared for the management and it was proceeded *ex-parte* on 5th June, 2012. Since then, till the passing of the impugned Award on 2nd February 2016, the Management did not bother to defend itself before the Labour Court. No evidence was led on its behalf, and it was proceeded *ex parte*.
- The order of the Labour Court dated 10th July, 2015 by which the enquiry was held to be contrary to law and was set aside, as also the final Award dated 2nd February 2016, have both been decided in favour of the Workman, and he has been reinstated with back wages and continuity of service. The Labour Court had no option but to accept the evidence on behalf of the Workman, as the Management did not lead any evidence.
- No official of the Management was examined before the Labour Court, including the driver who had made the endorsement during the enquiry, that the Workman had refused to go to Patna in his taxi.
- Even if the allegation of the Management is taken at its highest, the irregularity committed by the Workman was to the tune of Rs. 6,000/-, claiming LTC *qua* a journey from Delhi to Patna and back, in 1994.

16. Accordingly, the question is as to whether the domestic enquiry report conducted by the enquiry officer appointed by the Competent Authority of the Management ought to be believed, or does this Court have to go by the

Award of the Labour Court itself.

17. The enquiry report dated 17th January 2007, was set aside by the Labour Court vide its order dated 10th July 2015, on the ground that the same was violative of the principles of natural justice as the reports of the handwriting experts, which were produced by the Claimant, were not considered by the enquiry officer. Even if this Court presumes that the handwriting expert's report could not have been considered, and the enquiry report was valid in law, the matter only relates to a sum of Rs.6,000/- in respect of an alleged false LTC claim made by the Workman.

18. In the opinion of this Court, after the setting aside of the enquiry report dated 10th July 2015, a duty was cast upon the Management to lead evidence in the matter, to prove its case that the Workman had defrauded the Management. The Management had complete knowledge of the proceedings before the Labour Court, and it had also filed its Written Statement. None of the submissions being made today, in respect of jurisdiction, as well as loss of confidence, were made before the Labour Court.

19. The Workman was initially dismissed in 1996, was reinstated by an order of this Court dated 6th August 2002, in **CWP 3395/2001**, on 29th August, 2002. He was again terminated on 14th October, 2009, pursuant to the second enquiry report. The Workman has been fighting this litigation, in respect of the LTC which was availed by him, for the last 25 years against the Management. The only payment stated to have been received by him, during this period, is a sum of Rs.1,80,000/- to Rs.2,00,000/-, which is stated to have been made under Section 17B of the Act. The Workman, submits that he has been unemployed since his termination and he in fact chose not

to take any alternate employment. as he wanted to get his name cleared. He submits that he was also offered a Voluntary Retirement Scheme (VRS), however he did not accept the same. as that would have meant that his name would not have been cleared and he would have been presumed to be guilty of the offence alleged to have been committed by him in 1994.

20. Accordingly in the opinion of this Court, the termination of the Workman, vide letter dated 14th October, 2009, cannot stand in the eyes of law, as the Management has not proved on record that there was any fabrication of a bill of Rs.6,000/- by the Workman.

21. Insofar as the issue of jurisdiction is concerned, it is noted that since in Labour Courts, Advocates usually don't appear for the parties, in view of Section 36 of the Act, the Workman and the Management *per force*, conduct their own cases. The letter which has been placed before this Court dated 12th November, 2009, wherein the Workman had approached the Ministry of Labour and Employment, Government of India, and was told that the Central Government is not the appropriate Government in the matter, itself shows that the Workman had sought to avail of his remedies in accordance with law. However, upon being told by the Government Department, to approach the appropriate Government, he was constrained to approach the GNCTD, which referred his dispute to the Labour Court. The later dated 12th November 2009 reads as under:

“Your application dated nil received in this office on 3.11.2009 on the above cited subject is returned herewith as Central Government is not appropriate government in this dispute under the I.D. Act, 1947. You may raise your dispute before the appropriate government, if you, so desire.”

The claim was then filed before the Labour Court which exercised jurisdiction.

22. In respect of the relief ordered by the Labour Court, it is noted that the Workman was initially posted in Patna, however, thereafter he was shifted to Delhi, where he was posted until his termination. At the time when the Workman was terminated, admittedly, the Management was undergoing proceedings under the Sick Industrial Companies Act, 1986. Thus, it is very possible that there was no active business activity being conducted by the Management at that time. The workman, however, disputes this and submits that the Management had a 1000 employees during this period.

23. Be that as it may, the recent jurisprudence that has evolved from the Supreme Court clearly holds that in all cases, reinstatement need not be granted, and depending upon the facts of the case at hand, lump sum compensation can be awarded by Courts. In ***Allahabad Bank and ors. v. Krishan Pal Singh (SLP(C) No. 19648/2019, decided on 20th September 2021***), the Supreme Court has held:

“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.”

24. Thus, the Supreme Court has clearly recognised the fact that reinstatement is not an automatic consequence of wrongful termination, especially when the Workman is due to attaining superannuation, and has during the pendency of litigation, not performed any services with the Management. The Supreme Court has accordingly awarded lump sum compensation in such a case, as seen above. Even in ***Ranbir Singh v. Executive Eng. P.W.D. (Civil Appeal No. 4483/2010, decided on September 2, 2021)***, the Supreme Court has taken a similar view, and held 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.”

25. The judgment relied upon by the Management in **OP Bhandari** (*supra*) gives a lump sum compensation equivalent to 3.33 years of salary, on the basis of the last pay and allowances drawn by the Appellant therein. However, there is no fixed mathematical formula that has been set out in these cases as to what should be the lump sum compensation. The same has to be determined in the facts and circumstances of each case.

26. In the present case, the Workman was clearly working as an Agro-Representative (a sub-set of Medical Representative) with the Management. He was alleged to have fabricated an LTC claim, in lieu of his travel from Delhi to Patna and back. From his own statement, it is clear that his priority has been to clear his name from the matter, which has been done by the impugned order dated 2nd February, 2016. Further, the Management having not filed any evidence or cross examined the Workman before the Labour Court, the Workman cannot again be relegated to fight another round of litigation against the Management. The Workman submits that he is attaining superannuation on 31st October, 2021. It is in view of the Workman's impending superannuation that this matter has been heard on an urgent basis.

27. The Workman's stand has clearly been vindicated vide the impugned award dated 2nd February, 2016. However, this Court is mindful of the fact the Workman has not worked with the Management since his termination,

and has not rendered any services after 2009 i.e., for more than 12 years. Under these circumstances, the following directions are issued:

- i) A lump sum compensation of Rs.15,00,000/- shall be paid to the Workman by the Management, instead of the reinstatement and 100% back wages that have been awarded by the Labour Court vide its impugned Award.
- ii) In addition, litigation costs of Rs.1,00,000/- are awarded in favour of the Workman, to be paid by the Management.
- iii) The said amounts mentioned in directions (i) and (ii) above shall be paid within eight weeks. If the said amounts are not paid within 8 weeks, further interest at the rate of 6% simple interest, would be liable to be paid by the Management to the Workman, till the date of payment.

28. It is made clear that these amounts shall be paid without prejudice to the payment under Section 17B of the Act, which is stated to be subject matter of *LPA No. 506/2019*, titled *B.N. Singh v. M/s Hindustan Antibiotics Limited*. At this stage, Mr. Debasish Moitra, Id. Counsel for the Management submits that the Workman has been paid the amounts due under Section 17B in terms of the order. The said statement is taken on record. However, the issue of payment under Section 17B has not been gone into by this Court.

29. The present petition and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 28, 2021

Dj/Ak