



Despite receiving Rs.1,07,73,736 for procedural lapse on termination, a senior manager still wanted more

By Advocate H.L. Kumar

The desire is unending. The more one gets, the more one desires. This is a human weakness. It is very aptly said that 'Yeh Dil Maange More' (This heart desires more). It does not mean that any curb should be imposed on the wings of the human ambitions to soar high. In fact, it is the vision grounded on the reality that has been mainly responsible for achieving the lofty goals. Our Industrial jurisprudence strange to most of the manager of a bank getting month has been held to be section 2(s) of the 1947, and the even pay Rs. the compensation. Thus, any procedural lapse on Resource Managers the organisation. Such mainly due to wrong it is imperative on the Managements that they procedures.

**LABOUR LAWS SHOULD HELP
THE NEEDY, NOT THE GREEDY**

Even the laws enacted with the best intentions are often misused by those who are greedy. As Shakespeare had said in Merchant of Venicelike Devil Quoting Scriptures i.e. even good things can be twisted to achieve bad ends. It is unbelievable but true that a Senior Bank Manager drawing monthly salary of Rs.58,339 has been held to be a 'workman' which was confirmed by the High Court.

may really sound people, wherein a senior salary of Rs.58,339 per a 'workman' under Industrial Disputes Act, management had to 1,07,73,736/- by way of it becomes clear that the part of the Human results in heavy costs to lapses generally occur legal advice. Therefore, part of the follow the expert legal

The concept of the concept of an industrial dispute as an industrial dispute can be raised either by a 'workman' or an 'employer.' Since the Industrial Disputes Act, 1947 is a piece of beneficial legislation, the courts have enlarged the scope and applicability of this Act by giving a wide interpretation to the term 'workman'. Section 2(s) defines workman as any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, terms of employment are express or implied and include

'workman is central to

any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of the dispute. The amounts of money to be paid as wages have now become almost irrelevant.

The Courts have interpreted this definition and have identified various determining factors to know whether a person is a 'workman' or not. The factors which should be considered are - (a) whether there is a Master-Servant relationship', (b) when a person is performing various functions which overlap in their characteristics, the nature of the main function for which the claimant is employed should be considered. (c) work is either manual, skilled, unskilled, technical operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman, and hence the following factors must be taken into consideration.

The Delhi High Court by an order dated 12.10.2021 has directed the All-India Institute of Medical Sciences to pay a driver Rs.50 lac as salary in addition to Rs.19,900 per month toward monthly pension besides directing the AIIMS to deposit Rs.30,000 as a lifetime validation amount for being enrolled under the Employees and Health Scheme to a driver whose services were terminated in Dec. 1998. It is unbelievable an able-bodied person, that too, an experienced driver can remain unemployed for such a long period provided he was willing to work. A driver can easily find a job or ply a bus, truck, taxi, three-wheeler auto, e-rickshaw etc. etc.

In this context it is pertinent to refer to a judgment Delhi High Court¹ wherein it has been held as under :

"The fact that the respondent/workman was working as a Driver with the petitioner/management and therefore was a skilled person, it is hard to believe that even this long period from 14th September, 1990 till the award having been passed on 2nd December, 2003, he would have remained idle, especially when there is great demand of the drivers to drive the vehicle especially in big cities. Therefore, it is safe and reasonable to presume that the respondent/workman must have been gainfully employed as a Driver even during this period and he cannot be permitted to take advantage of the pendency of the proceedings before the Court and get a substantial amount of public money without having worked. No work no pay should be the rule".

Offenders Usually Bend or Break Laws

There are a large number of cases where the workers are absent or keep away from work and do not report for work despite offers made by the employers. On the contrary, they approach the Labour authorities and allege that their services have been dispensed with and seek reinstatement with back wages by abusing the process of law. Now in successive judgments, the Courts have held that such a workman cannot reap the benefits of his own fault.

The Industrial Disputes Act is the pivot of the labour laws. It has undergone comprehensive changes from time to time. It mainly stands on to fulcrums of dispute resolution and adjudication. However, the undercurrent is to dispense justice and prevent misuse of its benign provisions. Hence the Industrial Disputes Act provides the mechanism of the dispute resolutions supported with necessary infrastructure so that the energies of partners in production may not be dissipated in counterproductive battles and assurance of industrial justice may create a climate of goodwill. The emergence of the concept of welfare state implies an end to the exploitation of workmen and as a corollary to that collective bargaining came into its own and lest the conflicting interests of workmen and employer disturb the industrial peace and harmony,

machinery for adjustment of such conflicting interests became the felt need of time. Because if the disputes are not settled, they would result in a strike or lockout, and dislocation of business essential to the life of the community. At the same time, the provisions of the Act are meant to help the needy, and as such these provisions are not to be invoked by a person who is greedy.² The Bombay High Court has also observed that labour laws are not meant to harass the employer but to get the injustice undone. The machinery of the Act cannot be exploited to extract money from the employers in an unjust way.³

There is a catena of cases where the courts have ruled that the protective umbrella of the labour laws should not be used as a weapon against the management for subserving their vested interests. In one case, as High Court, it has been decided by the Madras made clear that the termination of a workman and not joining his duties for his habitual absence reminders to this effect will despite letters and be legal and justified and when no enquiry has been held by the management.⁴ The conspectus of the case was that the petitioner was working as the 'office boy' in the Corporate Company. The petitioner applied for leave on the 22nd April 1991 to 23rd May 1991. On 27th May 1991, he applied for leave for one day on 28th May 1991. His leave application was submitted in the corporate office and the same was approved. Thereafter, the petitioner remained absent. On 27th August 1991, a final reminder was sent stating that if the petitioner did not report for duty within 48 hours, he would be deemed to have left the service. Finally, on 13th September 1991, the petitioner was informed that in view of his continuous absence without leave application and without any information, he was treated as having left the service of the company with effect from 28th May 1991. The letter sent by registered post with acknowledgement due was returned with an endorsement 'refused by the petitioner'. The publication was made in "Daily Thanthi", dated 22nd September 1991.

The labour laws are beneficial legislations for the working class but there is no dearth of such persons to twist them as could never have been imagined by even the best legal brains. The labour laws have been made liberal to save the workers from exploitation, but the greedy charlatans have been misusing them to harass the employers.

On 22nd February 1993, the petitioner raised an industrial dispute challenging the order of termination of employment. The Labour Court did not give any relief to the workman and hence the validity of the order was challenged in the writ petition.

The petitioner contended that there has been a total violation of the principles of natural justice in passing an order of termination. The High Court said that even with regard to the contention that non-conduction of the enquiry would vitiate the whole proceedings, the petitioner's contention has also been correctly rejected by the Labour Court because the letters sent by the management, which have been marked as documents, would make it clear that the workman was required to join duty, failing which he would be deemed to have been terminated from service. For those letters, there was no response from the workman and the letters were returned with the endorsement "refused".

Reference is also made to a case by Delhi High Court holding that the Industrial Tribunal erred in granting reinstatement with full back-wages to the bank employee since he was not interested to be posted at a branch of the bank when he specifically wrote that he will not work unless he is posted at the place of his choice.⁵

In yet another case, the Bombay High Court has said that a workman cannot reap the benefit of his own fault when he fails to respond to the offer of the employer to join duties more particularly when such offer was reiterated before the conciliation officer.⁶ The High Court further said that it will not set aside the award of the Labour Court in holding that the workman, who failed to comply with the repeated offers to resume his duties after alleged termination, has abandoned the job of his own accord and as such he will not be entitled to reinstatement with back wages.

In this case, the workman joined the company as a clerk sometime in the year 1985 and filed a complaint that his services were illegally terminated orally from November 16, 1995, without any justifiable reason. Quoting from *Sonale Garments vs. Trimbak Shankar Karve*,⁷ the Bombay High Court has stated that “Whenever the employer offers to reinstate the workman at any stage of the dispute or proceedings and if the workman does not accept the offer even without prejudice to his rights and contentions, he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any back wages from the date of such offer, conditional or unconditional”.

The Bombay High Court while denying the back wages as claimed by a workman had observed that the materials on record apparently disclose that “the petitioners in their written statement had clearly stated that the workman was at liberty to report to duty without prejudice to the company’s right to take disciplinary action against him and the said statement was made as long back as on 23.3.1992 and yet the workman had not reported to duty nor any explanation in that regard was placed on record by the respondent. In the circumstances considering the fact that the workman failed to avail the opportunity offered by the petitioners the workman would not be entitled to saddle the employer with back wages for his own fault and own failure to report to the duties in spite of the unconditional offer being made by the employer”.⁸

No back-wages are to be granted when the workman has neither pleaded nor stated in evidence hence mere answer to a question in cross-examination about unemployment will not be justified for back-wages to workman as held by the Delhi High Court.⁹ Also back-wages are rightly denied if workman made no efforts to secure employment during interregnum.¹⁰

In another case, when the workman failed to make compliance to the offer made by the management before the Conciliation Officer to resume his duties but he failed to report for duty, the Labour Court held in granting reinstatement with 75% back-wages., the High Court set aside the Award.¹¹

It is also pertinent to note that when the workman not join duty despite repeated call letters sent or opportunity given, by the management, it will be appropriate to consider that he has abandoned the job himself. When the Award is neither perverse nor improper or based on evidence, the writ Court has no jurisdiction to entertain the same.¹²

Also, the Karnataka High Court has held that back-wages on reinstatement as awarded by the Labour Court could not be awarded by the High Court in a writ petition filed by the petitioner when on the date of hearing the respondent was absent and the High Court has affirmed the order dated 22.3.2014 that he will be entitled to wages only from the date he reports for duty and, as such, the order passed by the Labour Court under section 33C(2) of the Industrial Disputes Act has been set aside.¹³

In the absence of documentary evidence, merely filing affidavit or self-serving statements would not suffice.¹⁴

An employee, who has been repeatedly offered the opportunity to join the services by the employer, when fails to take benefit of such an offer, cannot thereafter insist for the relief of reinstatement or for back wages. It would amount to ordering a grant of premium for the mischief played by the workman himself. Being so, once the materials on record clearly disclose that in spite of repeated offers by the respondent company, the workman had failed to report to his duty, there was no fault on the part of the Labour Court in refusing the relief of back wages. Once it had been the consistent case of the company and having been established with the materials on record that there was no termination of services, but it was a case of abandonment of services by the employee without any justifiable reason, the question of ordering reinstatement also cannot arise viewed from this angle, therefore, there was no case for interference in the impugned order by this Court in its writ jurisdiction.

1. *Delhi Transport Corporation vs. Sh. Ram Kishan (Ex-Driver)*, 2010 LLR 394 (Del. HC).
2. *MukeshKhanna vs. Chandigarh Administration, Chandigarh*, 2000 LLR 168 (P&H HC).
3. *M/s. Purofil Engineers Pune vs. Shaikh Anwar Abdul Raman*, 2000 LLR 268 (Bom. HC).
4. *P. Krishnan vs. Management, Jonas Woodhead& Sons (India) Ltd. Madras and Presiding Officer, Second Addl. Labour Court, Madras*, 2003 LLR 852 (Mad. HC).
5. *Syndicate Bank vs. Sh. B.N. Pandey & Anr.*, 2010 LLR 903 (Del. HC).
6. *Raju Shankar Poojary vs. Chambur Warehouse Company and Another*, 2003 LLR 1150 (Bom.HC).
7. Writ Petition No.836 of 1996 decided on 29th August 2002.
8. *Suja Agencies vs. Uday Singh B. Rawat and Another*, 2004 LLR 20 (Bom. HC)
9. *All India Institute of Medical Sciences vs. Raj Singh*, 2007 LLR 852 (Del. HC).
10. *GopalNandkishor Sharma vs. Manager, Nanavati Associates*, 2007 LLR 1164 (Guj. HC).
11. *Management of M/s. Amazone Exports Pvt. Ltd. vs. Secretary Labour & Anr.*, 2013 LLR 312 (Del. HC).
12. *Jamil A. Adhikari, Mumbai vs. Oberoi Towers, Mumbai*, 2016 LLR 901 (Bom.HC).
13. *Bangalore Metropolitan Transport Corporation vs. B. Ningappa*, 2016 LLR 384 (Karn. HC).
14. *Badal Prasad vs. The State (NCT of Delhi) & Anr.*, 2012 LLR 1125 (Del. HC).

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