

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

**% W.P. (C) 10716/2005**

**+ Date of Decision: 17<sup>th</sup> July, 2012**

**# Delhi Transport Corporation ....Petitioner**  
**! Through: Ms. Aarti Mahajan Shedha &**  
**Mr. Gaurav Bisht, Advocates**

**Versus**

**\$ Chander Mohan ...Respondent**  
**Through: Mr. Atul T.N., Advocate**

**CORAM:**  
**\* HON'BLE MR. JUSTICE P.K.BHASIN**

**JUDGMENT**

**P.K.BHASIN, J:**

This writ petition has been filed by the petitioner(DTC) challenging the award dated 16<sup>th</sup> February, 2004 passed by the Labour Court holding the termination of the services of the respondent-workman to be illegal and directing his reinstatement in service with full back wages.

2. The facts leading to the filing of the said petition may be noted briefly. The respondent-workman was appointed by the petitioner as a conductor on 22<sup>nd</sup> September, 1998. His engagement was on temporary basis and he was working as a daily wager from 23<sup>rd</sup> September, 1998 till 12<sup>th</sup> September, 2000 when his services were terminated.

3. In order to seek redressal of his grievance against the termination of his services the workman-respondent had raised an industrial dispute which in due course came to be referred for adjudication to the Labour Court. The following was the term of reference:

“Whether the orders of the management dated 12.9.2000 dispensing with services of Sh. Chander Mohan is illegal and/or unjustified and if so, to what sum of money as monetary relief along with consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is he entitled and what directions are necessary in this respect?”

4. The learned Labour Court after perusing the evidence adduced before it by the parties in support of their respective stands came to the conclusion that respondent-workman had worked for more than 240 days before the termination of is

services and therefore, the termination of his services by the management without following the provisions of Section 25(F), (G) & (H) of the Industrial Disputes Act, 1947 was illegal. Feeling aggrieved, the management filed this petition for quashing of the award of the Labour Court.

5. Ms. Aarti Mahajan, learned counsel for the petitioner did not challenge the correctness of the conclusion of the Labour Court that the respondent-workman had worked for more than 240 days with DTC and that the termination of his services amounted to his retrenchment. However, she had strongly contended that even if the termination of the services of the respondent-workman had been found by the Labour Court to be in contravention of the provisions of Section 25-F, G & H of the Industrial Disputes Act still the direction given for his reinstatement with full back wages should not have been given in the impugned award and if at all any relief was to be given to the workman some monetary compensation only could have been awarded considering the fact that he was a daily wager and had worked for less than two years with the petitioner.

6. Learned counsel for the respondent on the other hand fully supported the award of the Labour Court and submitted that since there was no perversity in the award of the Labour Court this Court should not interfere in that award in exercise of writ jurisdiction which has to be exercised only when the award of industrial adjudicator is perverse or highly unreasonable.

7. The Supreme Court had in the case of **“Senior Superintendent Telegraph (Traffic), Bhopal, Vs. Santosh Kumar Seal and others”**, 2010 (6) Supreme Court Cases 773 while considering the effect of termination of the services of some daily wagers in contravention of the provisions of Section 25-F of the Act had observed as under:-

“6. In last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

7. In a recent judgment authored by one of us (R.M. Lodha, J.) in the case of Jagbir Singh v. Haryana State Agriculture Marketing Board and Anr. (2009) 15 SCC 327 the aforesaid decisions were noticed and it was stated:

7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the

termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. *The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”*

*(emphasis supplied)*

8. Same view was taken by the Apex Court even in a case of violation of Section 25-F & G in **“Jaipur Development Authority v. Ramsahai and Anr.”, (2006) 11 SCC 684** and in this case also relief of compensation only was given after upholding the termination of services of the concerned

workman to be illegal and setting aside the relief of reinstatement and back wages given by the Labour Court. The Supreme Court had observed that:-

“28. We would, therefore, proceed on the basis that there had been a violation of Sections 25G and 25H of the Act, but, the same by itself, in our opinion, would not mean that the Labour Court should have passed an Award of re-instatement with entire back wages. This Court time and again has held that the jurisdiction under Section 11A must be exercised judiciously. The workman must be employed by a State within the meaning of Article 12 of the Constitution of India, having regard to the doctrine of public employment. It is also required to recruit employees in terms of the provisions of the rules for recruitment framed by it. Respondent had not regularly served appellant.....It would not be proper to direct his reinstatement with back wages.....”  
(emphasis supplied)

9. In view of the aforesaid legal position laid down by the Apex Court, the relief of reinstatement and back wages given to the respondent-workman, a daily wager, cannot be sustained at all and the discretion exercised by the Labour Court while directing the management to reinstate the workman with full back wages cannot be said to have been exercised reasonably.

10. This petition is, therefore, allowed, but only partly by converting the award of reinstatement and back wages passed

by the Labour Court in favour of respondent- workman into that of payment of compensation of ₹ 40,000/- to him. Parties are, however, left to bear their own costs.

**P.K. BHASIN, J**

**JULY 17, 2012**