

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

Judgment Reserved on February 11, 2014

Judgment Delivered on May 27, 2014

+ **W.P.(C) 6933/2003**

NEW DELHI MUNICIPAL COUNCIL Petitioner

Represented by: Ms. Manpreet Kaur, Advocate
with Mr. Arun Bhardwaj,
Advocate

versus

NANAK CHAND & ANR. Respondents

Represented by: Mr. Rajiv Aggarwal, Advocate

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the award dated December 13, 2001 passed by the Labour Court in I.D No.203/1994, whereby the Labour Court has directed the reinstatement of the respondent No.1 with full back wages and continuity in service.

2. The reference to the Labour Court by the appropriate government vide order dated July 08, 1994 was on the following terms:

“Whether the services of Sh.Nanank Chand have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect.”

3. The case of the respondent No.1 before the Labour Court was that he joined the services of the petitioner in the Horticulture Department as Mali with effect from February 13, 1987. He was treated as daily rated casual/muster roll worker and was paid Rs.450/- p.m as consolidated

pay. It was the case of the respondent No.1 that he was terminated illegally on April 16, 1988 without assigning any reasons. It was his case that the job against which he was working was regular in nature. He had also alleged that juniors to him are still in the service which is in violation of Section 25G, 25H of the Industrial Disputes Act, 1947 (Act in short) and Rule 76, 77 & 78 of the Industrial Disputes (Central) Rules, 1957. It was his case that he had completed 248 days of continuous service and no notice was given before terminating his service and had prayed for reinstatement with back wages.

4. On the other hand, it was the case of the petitioner herein before the Labour Court that the respondent No.1 was engaged as Mazdoor on muster roll on temporary basis only and after the work was over, he left on his own and had not come forward or inquired about the work after April 15, 1988. In other words, it was their case that his services were never terminated. The petitioner had denied that any person junior to him was working with it. The petitioner had also taken a stand that the respondent No.1 was gainfully employed after his alleged termination. Therefore, he was not entitled to any relief as prayed for. It was also their case that the respondent No.1 had worked between the period November 07, 1987 to April 15, 1988 with usual breaks in service.

5. The petitioner had also stated that after 1988 the respondent No.1 alleged to have sent the demand notice only on July 11, 1992 which itself prove that he was not interested in serving on daily wages. Therefore, he had not come forward after April 15, 1988.

6. The Labour Court framed the following three issues:

(1) Whether the workman was in the employment of the management as Mali or Mazdoor.

(2) Whether the workman left his job after 15.4.88.

(3) As per terms of reference.

7. Insofar as issue No.1 is concerned, the same was decided in favour of the workman, by holding that when workman is not regular he is called Mazdoor and when regular he is called as a Mali. The Labour Court of the view that the services of the respondent No.1 were terminated illegally without complying with due process of law. Therefore, he was entitled to reinstatement and full back wages as there is nothing on record that he was gainfully employed.

8. It is the contention of Ms.Manpreet Kaur, learned counsel for the petitioner that the respondent No.1 was engaged as a daily wager mazdoor and the engagement came to an end when the work was over. The respondent No.1 did not come for fresh engagement after April 15, 1988. She would also state that the respondent No.1 has not completed 240 days. She had drawn my attention to the affidavit filed by Mr.B.S.Sharma (MW1), wherein he has stated that the respondent No.1 had worked for 82 days. Alternatively she had pleaded that even if the provisions of Section 25F of the Act have not been followed, then also it is compensation which need to have been granted.

9. On the other hand, Mr.Rajiv Aggarwal, learned counsel for the respondent No.1 would submit that the petition has been filed after 2 years from the date of the impugned award. He would state that the respondent No.1 had completed 240 days. No notice nor notice pay in lieu thereof was given to the respondent No1 while terminating the services. He would also submit that persons junior to him had been retained in service, whereas the petitioner has been singled out for termination. Further he states that there was nothing adverse against the

respondent No.1. Insofar as compensation is concerned, he submits that no such plea was taken by the petitioner before the Labour Court. He would rely upon the following judgments in support of his contentions:

(a) Shri Sukhbir Singh & Anr. vs. Union of India & Anr., W.P.(C) 7347/2009, decided on April 15, 2009.

(b) 2007 (8) SCC 449 Prestige Lights Ltd. vs. State Bank of India

(c) 2008 (4) SCC 127 G.M, Haryana Roadways. Vs. Jai Bhagwan & Anr.

(d) 2010 (3) SCC 192 Harjinder Singh vs. Punjab State Warehousing Corporation

(e) 117 (2005) DLT 63 MCD vs. Asha Ram

(f) 2010 (5) SCC 497 Anoop Sharma vs. Executive Engineer, Public Health Division No.1, Panipat Haryana

(g) MCD vs. Presiding Officer, Industrial Tribunal & Anr., W.P.(C) 6024/1999 decided on August 25, 2011.

(h) 2010 (3) SCC 637 Krishan Singh vs. Executive Engineer, Haryana State Agriculture Marketing Board, Rohtak (Haryana)

(i) MCD vs. Laxmi Devi W.P.(C) No.8144/2007 decided on January 20, 2014

(j) 1999 (6) SCC 82 Ajaib Singh vs. The Sirhind Cooperative Marketing cum Processing Service Society Ltd. & Anr.

10. Having heard the learned counsel for the parties, the first issue need to be decided is whether the workman had put in 240 days continuous service in the relevant year. I note that the Labour Court relied upon Ex.MW1/W-1 which is a document, depicting the respondent

No.1 having worked for 240 days. That apart the document was certified by the petitioner's own officer namely Mr.B.S.Sharma (MW1) to the effect that respondent No.1 had rendered 240 days. That apart, MW1 (B.S.Sharma) has also admitted the contents of Ex.MW1/W1 by stating that the name of the respondent No.1 appears at serial No.36 and respondent No.1 worked for 248 days. I also note that MW2 namely J.P.Sharma had also testified that the respondent No.1 had worked in NDMC for more than 240 days in 12 calendar months. In view of the aforesaid deposition of the officers of the petitioner, there is no dispute about the respondent No.1 having worked for 240 days. Since there is no dispute on the aspect of the respondent No.1 having worked for 240 days, the Labour Court held that the respondent No.1's retrenchment could not have been without following the mandate of 25F of the Act. Primarily for the said reason, the Labour Court had granted the relief. To that extent the conclusion of the Labour Court cannot be interfered with.

11. Now the question which would arise is whether the Labour Court was justified in giving the relief of reinstatement with full back wages. Before I deal with this question I deal with the judgments relied upon by the learned counsel for the respondent No.1.

12. Insofar as the judgment of this Court in Sukhbir Singh's case (supra) is concerned, the learned Single Judge of this Court has held that a petition filed after a gap of 8 years is not maintainable and the petitioner cannot claim a reference to the industrial adjudicator at such a belated stage. It appears that this judgment is being relied upon by the respondent No.1 to seek the dismissal of the writ petition as the same has been filed after about 2 years from the date of the impugned award. As I note that the writ petition has been filed in the year 2003 and has been

pending for more than 11 years, it would be too late in the day to non-suit the petitioner only on the ground of delay and laches. That apart I note that the petitioner in para No.8 had justified the delay in filing the writ petition on account of the fact that the petitioners were keen to settle the matter amicably with the respondent No.1 but the efforts went in vain.

13 Insofar the judgments of the Supreme Court in Prestige Lights Ltd. case (supra) and G.M, Haryana Roadways case (supra) are concerned, the same primarily decides, that concealment of facts would disentitle a party the relief. It was the case of the respondent No.1 that the petitioner has concealed the material facts inasmuch as after the impugned order was passed in the year 2001 on an application filed by the respondent No.1 seeking implementation of the impugned award the respondent No.1 recovered back wages amounting to Rs.2,73,824/- on August 04, 2003 for the period between April 16, 1988 to August 31, 2002. This concealment being material would dis-entitle the petitioner any relief. I note from the writ petition that the petitioner has not averred about the execution proceedings initiated by the respondent No.1 and also the fact that the petitioner had paid an amount of Rs.2,73,824/- on August 04, 2003. It is a material fact, which should have been disclosed. This aspect should surely be considered by this Court while concluding this judgment.

14. Insofar as the judgments of the Supreme Court in Harjinder Singh's case (supra), Asha Ram & Anr. case (supra) and Anoop Sharma's case (supra) are concerned, the Supreme Court in a case reported as 2013(5) SCC 136, Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub Division, Kota vs. Mohan Lal wherein Harjinder

Singh's case (supra) was referred to and distinguished, had granted compensation in lieu of reinstatement and back wages. This Court relying on *Assistant Engineer, Rajasthan State Agriculture Marketing Board Sub Division, Kota (supra)* had decided W.P.(C) 2354/2012 on February 11, 2014 whereby modified the order of the Labour Court from that of reinstatement with back wages to that of compensation. The same shall be dealt with in the later part of this judgment.

15. Insofar as the judgment of this Court in *MCD vs. Presiding Officer, Industrial Tribunal & Anr.* is concerned, this Court had held that if there is violation of Section 25G of the Act, it is not obligatory to prove the completion of 240 days in the year preceding the date of termination of service. Since the Labour Court has not given any finding on this aspect and had granted relief to the respondent No.1 and also the fact that the respondent No.1 has not challenged the award on that ground the judgment would not be applicable while considering the legality of the award of the Labour Court.

16. Insofar as the judgment of the Supreme Court in Krishan Singh's case (supra) is concerned, suffice to state that the Supreme Court was concerned with an award of the Labour Court which set aside the termination of the worker on the ground that the same was in violation of Section 25F of the Act. The award was set aside by the High Court. The Supreme Court held that the Labour Court has exercised its jurisdiction taking into consideration the pleadings of the parties and evidence on record. As to be noted in the subsequent paras the Supreme Court has held that reinstatement with full back wages is not automatic. The Supreme Court has also upheld the grant of compensation in lieu of reinstatement with back wages and I shall be referring to the said

judgment hereinafter.

17. Insofar as the judgment of this Court in MCD vs. Laxmi Devi case (supra) is concerned, this Court has concluded that Section 25G has been violated, whereas in the case in hand, no such conclusion has been arrived at. Rather the Labour Court finding was only with regard to Section 25F of the Act. As stated above, the respondent No.1 has not challenged the award.

18. Insofar as the judgment in Ajaib Singh's case (supra) is concerned, the same would have no bearing in the facts of this case as I note that the Labour Court had entertained the industrial dispute and granted relief to the respondent No.1.

19. One fact which I would like to highlight is that in this writ petition and connected writ petitions this Court had directed the petitioner either to take the workers back on duty or to pay them the minimum wages. The said order was challenged by the petitioner before the Supreme Court and the Supreme Court was pleased to say the order and granted leave to appeal. While disposing of the appeals the Supreme Court did not alter the stay order already granted by it and directed this Court to dispose of the writ petition within 3 months from the date of order i.e. April 03, 2013. In the eventuality the petitions are not disposed of within 3 months, it would be open to the respondent No.1 to file an application under Section 17-B of the Act. It appears, no such application was filed.

20. Now coming to the relief I have concluded that the order of the Labour Court holding the termination to be bad. As referred above, recently this Court had decided writ petition No.2354/2012 on February 11, 2014, wherein the issue which fell for consideration was that whether if the termination is held to be bad for non-compliance of Section 25F of

the Act, the reinstatement with full back wages shall necessarily follow.

This Court while deciding the said issue has held as under:

19. *The question which now falls for consideration is whether in the given facts the Labour Court was justified in giving reinstatement to the respondent with full back wages and continuity of service. The normal rule being reinstatement with back wages, there can be a departure from the said rule for certain good reasons. The Supreme Court in the case of Senior Superintendent Traffic, Bhopal vs. Santosh Kumar Seal & Ors. inter-alia held that the relief by way of reinstatement with full back wages is not automatic even if termination of an employee is found to be illegal or any contravention of the prescribed procedure and with monetary compensation in lieu of reinstatement and back wages in cases of such nature may be proper. The Court in the said case had granted compensation of ₹40,000/- to each of the workman.*

20. *In its latest opinion reported as (2013) 5 SCC 136 Assistant Engineer, Rajasthan State Agriculture Marketing Board Sub Division Kota vs. Mohan Lal, the Supreme Court after considering its earlier judgment had granted compensation of ₹1,00,000/- to the workman where the workman had worked for a period between November 01, 1984 and February 17, 1986 and who had raised industrial dispute after 6 years. The relevant portion of the judgment is reproduced hereunder:*

9. *In L. Robert D'Souza [L. Robert D'Souza v. Southern Railway, (1982) 1 SCC 645 : 1982 SCC (L&S) 124] this Court in para 27 held as under: (SCC p. 664)*

“27. ... Therefore, assuming that he was a daily-rated worker, once he has rendered continuous uninterrupted service for a period of one year or more, within the meaning of Section 25-F of the Act and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, notwithstanding the fact that Rule

2505 would be attracted, it would have to be read subject to the provisions of the Act. Accordingly the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment, the order of termination would be illegal and invalid.”

What has been held by this Court in L. Robert D'Souza [L. Robert D'Souza v. Southern Railway, (1982) 1 SCC 645 : 1982 SCC (L&S) 124] is that Section 25-F of the ID Act is applicable to a daily-rated worker. We do not think that there is any dispute on this proposition.

10. In RBI v. S. Mani [(2005) 5 SCC 100 : 2005 SCC (L&S) 609] , this Court in para 54 of the Report held as under: (SCC p. 120)

“54. Mr Phadke, as noticed hereinbefore, has referred to a large number of decisions for demonstrating that this Court had directed reinstatement even if the workmen concerned were daily wagers or were employed intermittently. No proposition of law was laid down in the aforementioned judgments. The said judgments of this Court, moreover, do not lay down any principle having universal application so that the Tribunals, or for that matter the High Court, or this Court, may feel compelled to direct reinstatement with continuity of service and back wages. The Tribunal has some discretion in this matter. Grant of relief must depend on the fact situation obtaining in a particular case. The industrial adjudicator cannot be held to be bound to grant some relief only because it will be lawful to do so.”

11. In Nagar Mahapalika v. State of U.P. [(2006) 5 SCC 127 : 2006 SCC (L&S) 934] , this Court, while dealing

with the non-compliance with the provisions of Section 6-N (which is in pari materia with Section 25-F) of the U.P. Industrial Disputes Act held that the grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workmen would not automatically follow or as a matter of course. Instead, this Court modified the award of reinstatement with compensation of Rs 30,000 per workman. In Municipal Council, Sujapur v. Surinder Kumar [(2006) 5 SCC 173 : 2006 SCC (L&S) 967] this Court after having accepted the finding that there was violation of Section 25-F of the ID Act, set aside the award of reinstatement with back wages and directed the workman to be paid monetary compensation in the sum of Rs 50,000. In Mamni [Haryana State Electronics Development Corpn. Ltd. v. Mamni, (2006) 9 SCC 434 : 2006 SCC (L&S) 1830] this Court modified the award of reinstatement passed by the Labour Court, though the termination of the workman was in violation of Section 25-F of the ID Act, by directing that the workman should be compensated by payment of a sum of Rs 25,000.

12. In SBI v. Mahatma Mishra [(2006) 13 SCC 727 : (2008) 1 SCC (L&S) 988] this Court observed that: (SCC p. 734, para 12)

“12. ... It [was] one thing to say that services of a workman [were] terminated in violation of mandatory provisions of law but it [was] another thing to say that relief of reinstatement in service with full back wages would be granted automatically.”

13. In HUDA v. Om Pal [(2007) 5 SCC 742 : (2007) 2 SCC (L&S) 255] this Court in paras 7 and 8 of the Report held as under: (SCC p. 745)

“7. Moreover, it is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of

the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.

8. The respondent worked for a very short period. He only worked, as noticed hereinbefore, in 1994-1995. The Industrial Tribunal-cum-Labour Court, therefore, in our opinion committed an illegality, while passing an award in the year 2003, directing the reinstatement of the respondent with full back wages. Although we are of the opinion that the respondent was not entitled to any relief, whatsoever, we direct the appellant to pay him a sum of Rs 25,000.”

14. In Uttaranchal Forest Development Corpn. v. M.C. Joshi [(2007) 9 SCC 353 : (2007) 2 SCC (L&S) 813] , this Court was concerned with a daily wager who had worked with Uttaranchal Forest Development Corpn. from 1-8-1989 to 24-11-1991 and whose services were held to be terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The Labour Court had directed the reinstatement of the workman with 50% back wages from the date the industrial dispute was raised. Setting aside the order of reinstatement and back wages, this Court awarded compensation in a sum of Rs 75,000 in favour of the workman keeping in view the nature and period of service rendered by the workman and the fact that industrial dispute was raised after six years.

15. In M.P. Admn. v. Tribhuban [(2007) 9 SCC 748 : (2008) 1 SCC (L&S) 264] this Court upheld the order of the Industrial Court passed in its jurisdiction under Section 11-A of the ID Act awarding compensation and set

aside the judgment of the Single Judge and the Division Bench that ordered the reinstatement of the workman with full back wages. This Court in para 12 of the Report held as under: (SCC p. 755)

“12. In this case, the Industrial Court exercised its discretionary jurisdiction under Section 11-A of the Industrial Disputes Act. It merely directed the amount of compensation to which the respondent was entitled had the provisions of Section 25-F been complied with should be sufficient to meet the ends of justice. We are not suggesting that the High Court could not interfere with the said order, but the discretionary jurisdiction exercised by the Industrial Court, in our opinion, should have been taken into consideration for determination of the question as to what relief should be granted in the peculiar facts and circumstances of this case. Each case is required to be dealt with in the fact situation obtaining therein.”

16. In Mahboob Deepak [Mahboob Deepak v. Nagar Panchayat, Gajraula, (2008) 1 SCC 575 : (2008) 1 SCC (L&S) 239] this Court stated that an order of retrenchment passed in violation of Section 6-N of the U.P. Industrial Disputes Act may be set aside but an order of reinstatement should not however be automatically passed. This Court observed in paras 11 and 12 of the Report as follows: (SCC p. 578)

“11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748: (2008) 1 SCC (L&S) 264].)”

21. The judgment in Assistant Engineer, Rajasthan State Agriculture Marketing Board Sub Division, Kota case (supra) has been followed by the Supreme Court in its latest opinion reported as 2014 (2) Scale 399 Hari Nandan Prasad & Anr. vs. Employer I/R to Management of FCI & Anr., wherein the Supreme Court has held as under:

“It is true that the earlier view of this Court articulated in many decision 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.

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, 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.

Jagbir Singh has been applied very recently in Telegraph Deptt. Vs. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p.777, para 11)

In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.

Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner:

“It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

Reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that

when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily wage basis and even after he is reinstated, he has no right to seek regularization (See: State of Karnataka vs. Uma Devi (2006) 4 SCC 1). Thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.

We would, however, like to add a caveat here. There may be cases where termination of a daily wage worker is found to be illegal on the ground it was resorted to as unfair labour practice or in violation of the principle of last come first go viz. while retrenching such a worker daily wage juniors to him were retained. There may also be a situation that persons junior to him were regularized under some policy but the concerned workman terminated. In such circumstances, the terminated worker should not be denied reinstatement unless there are some other weighty reasons for adopting the course of grant of compensation instead of reinstatement. In such cases, reinstatement should be the rule

and only in exceptional cases for the reasons stated to be in writing, such a relief can be denied”.

22. In the present case the respondent No.1 has worked for the period between February 02, 1987 to April 16, 1987, roughly more than one year. It was his case that he was being paid Rs.450/- per month. He has been litigating before the Labour Court, this Court and the Supreme Court for the last 22 years and respondent No.1 has been able to secure part of the back wages of Rs. 2,73,824/-, I deem it appropriate to grant the respondent No.1 an amount of Rs.50,000/- as compensation in lieu of reinstatement with full back wages. I impose a costs of Rs.10,000/- on the petitioner for not disclosing the fact that it had paid an amount of Rs.2,73,824/- to the respondent No.1 during the execution proceedings in the writ petition as well as in the stay application. The aforesaid amount shall be paid to the respondent No.1 within a period of two months from today, failing which interest @ 10% p.a would accrue on the aforesaid amounts. The impugned award dated December 13, 2001 is modified to the aforesaid extent and the writ petition is disposed of.

CM No.12056/2003

In view of the order passed in the writ petition, the application is disposed of as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

MAY 27, 2014
km