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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on 4th August, 2016
Decided on 23rd September, 2016

+ **LPA 288/2013**
SHRI MAHENDER MANDAL Appellant
Through: Mr.S.R. Sharma, Advocate

Versus

GOVT. OF PUNJAB THROUGH GENERAL MANAGER,
PUNJAB BHAWAN. Respondents
Through: Ms.Latika Choudhary, Advocate

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CORAM:

HON'BLE MR.JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Mahender Mandal, by way of this intra court appeal impugns the order dated 6th March, 2013 passed by the learned Single Judge in WP(C)3219/1995 titled as Govt. of Punjab, through General Manager, Punjab Bhawan vs. Shri Mahender Mandal & Anr. whereby the industrial award dated 20th May, 1995 passed by the Labour Court, Tis Hazari, Delhi in ID No.113/85 on a reference made to it by the appropriate government on 8th April, 1985 with regard to termination of the services

of the appellant directing his reinstatement in service without back wages was set aside and compensation of Rs.30,000/- was awarded to him.

2. The appellant was appointed on 22nd December, 1980 to the post of Waiter in the Hospitality Wing of Punjab Bhawan, New Delhi. The said appointment was on purely temporary basis. He was placed on probation for a period of two years and it was further stipulated that the appellant's term would be extended only after completion of probation period successfully. During the subsistence of the period of probation vide order dated 13th February, 1983, the services of the appellant were terminated. The said termination led the appellant to raise the industrial dispute which was decided by the Labour Court vide award dated 20th May, 1995. The Labour Court held that it was not obligatory on the part of the management to hold an inquiry against the workman during the probation period for terminating his services without casting any stigma while passing an order of termination simplicitor and, therefore, there was no illegality in the order of termination of the workman by the management and there was no violation of any law by the management. Yet, the Labour Court went on resorting to the concept of piercing the veil for arriving at the conclusion that although the wordings of the termination order prima facie makes termination order to be simplicitor

but it, in fact, was based on the misconduct of the workman which warranted holding an inquiry into the allegations of misconduct. Since the same was not resorted to, as such, there was violation of principles of natural justice and, therefore, the termination of service of the workman was unjustified. Accordingly, he was held entitled for reinstatement in service except actual pay for the entire period since termination of his service till reinstatement. The intervening period was deemed to be a period spent in service for all purposes, except actual payment of salary.

3. Aggrieved by the said award, the Govt. of Punjab filed the aforesaid writ petition. Learned Single Judge while setting aside the impugned award observed that the termination order on the face of it, is totally innocuous and non-stigmatic. The past conduct of the respondent's unsatisfactory service in the present case was reflected in the communications issued to him in relation to his service. These three communications were spread over a period of about 8 months. On the first occasion, he was found to have left his duty before time which inconvenienced the guests. On the second occasion, he went on unauthorized leave. On the third occasion, he did not attend to one of the guests properly. The alleged incident involving the procurement of a girl for one of the guests in the guest house for immoral purposes may

have only acted as a trigger for the petitioner to arrive at its decision to terminate the services of respondent while he was on probation. However, the petitioner has not formally charged the respondent in respect of the said incident. Admittedly, no show cause notice was issued to the respondent levelling charges against him and, consequently, no enquiry was held in that regard. Therefore, the petitioner had not stigmatized the respondent either in the order of termination or even otherwise. It was further observed that there was no charge leveled against the respondent. Consequently, there was no occasion to tear or pierce the veil to find out the real nature of the order. Reliance was placed on *Governing Council of Kidwai Memorial Institute of Oncology, Bangalore vs. Dr. Pandurang Godwaikar and Anr.* AIR 1993 SC 392, where it was held that the employer is entitled to look into a complaint made in respect of the employee while discharging his duties for purpose of making assessment of performance of such an employee. Pertinently, the Supreme Court has not put any fetters or pre-conditions on the employer that such a complaint must first be looked into by associating the probationer, before looking into the same to arrive at a decision whether or not, to continue the services of the probationer. The

termination of the respondent's services was held to be not punitive and could not be said to be illegal on that account.

4. However, learned Single Judge went on observing that even a probationer is entitled to protection under the provisions of Section 25-F of the Act. Termination would be illegal if Section 25F of the Act is breached. The respondent had been serving the petitioner since 22.12.1980 and his services were terminated on 13.2.1983. It is not the petitioner's case that the respondent had not been serving continuously or that he had not rendered 240 days of service in the year preceding his termination. Consequently, the retrenchment of the respondent was illegal. However, since the respondent was only a probationer, he had no right to the post, till he got confirmed. He had only served for a little over two years. Therefore, even if his retrenchment was illegal, he would not be entitled to reinstatement in service automatically. Services as a waiter in a Guest House of the State Government involves an element of trust, as guests come with their valuables which are left by them in their rooms which are visited by waiters while rendering their services. In the present case, it is clear that the management had lost trust and faith in the respondent. That was another reason why relief of reinstatement in service was not called for. Moreover, by noting the shift

in the law particularly in cases of casual employees as held by Supreme Court in *Jagbir Singh vs. Haryana State Agriculture Marketing Board and Another*, (2009) 15 SCC 327 a sum of Rs.30,000/- was awarded as compensation to the respondent-appellant.

5. Feeling aggrieved and dissatisfied, this letters patent appeal has been filed by the appellant.

6. Counsel for the appellant challenges the impugned order dated 6th March, 2013 passed by learned Single Judge, inter alia on the following grounds:-

- (i) The services of the appellant were regularized w.e.f. 23rd December, 1980 and was terminated vide order dated 13th February, 1983. The incident of procurement of a girl in room No. 29 at 4th floor of Punjab Bhawan on 21st January, 1983 was the foundation of his termination. It is submitted that as per the version of the appellant, he rescued the girl from the clutches of the inmates of room No. 29 and complained the matter to the management while the stand of the management is that the appellant was instrumental in bringing the girl as aforesaid. Counsel urged that without affording an opportunity to show cause

by holding a preliminary inquiry into this incident, termination of the appellant was punitive and stigmatic.

(ii) The question whether the termination of the appellant was innocuous or a mere camouflage for an order of dismissal for misconduct, the Court was competent to go behind the form of order to ascertain the true character thereof and if the Court holds that though the form of the order was simplicitor/innocuous but in reality was a cloak/camouflage for an order of punishment, the court would not be debarred from giving effect to the rights conferred by law upon the workmen merely because of the form of the order.

(iii) The plea of retrenchment was not taken by either of the parties, it being a simple case of termination of service under the relevant service rules governing the service conditions of the appellant.

(iv) The learned Single Judge fell in error in interfering with the award passed by the Labour Court directing his reinstatement in service. While exercising jurisdiction under Article 226 and 227 of the Constitution of India, the High Court is debarred from re-appreciating the evidence and recording its own finding on the

contentious issues and should refrain from interfering with the award of the Labour Court merely because of a possibility of forming a different opinion on the entitlement of the workman with regard to reinstatement/back wages in cases of wrongful termination. The same is contrary to the judgment of the Supreme Court in *Harjinder Singh vs. State of Punjab*, AIR 2010 SC 1116 and *Deepali Gundu Surwase vs. Kranti Jr. Adhyapak Mahavidyalaya (D.Ed.) and Ors.*, 2013 (11) Scale 268.

7. Per contra, learned counsel for the respondent submitted:-

(i) The workman was appointed on 22nd December, 1980 on the post of Waiter in the hospitality wing of Punjab Bhawan, New Delhi on purely temporary basis with a clear stipulation in the appointment letter that "*your appointment is on purely temporary basis and this does not carry any commitment for a permanent job.*"

As such, your services can be terminated without notice in case there is no such post existing against which you could officiate."

Besides this, the appellant was put on probation for two years and the term of appointment would be extended only after completing this probation period successfully and by no stretch of imagination he can claim himself to be a regular employee. During the period

of probation, the appellant's work and conduct was not found satisfactory. He was issued memos from time to time, i.e. on 21st September, 1981, 28th March, 1982 and January, 1983. By memo dated 21st September, 1981, the appellant's explanation was called for his having left his duty before 9:30 pm on 7th September, 1981 which resulted in the guests not being served their meals. On 28th April, 1982 another memo was served to the appellant since he proceeded on leave w.e.f. 30th December, 1981 to 4th January, 1982 without obtaining prior approval. In January, 1983, the workman was issued memo on the complaint of one Sh. Chaman Lal, MLA which when inquired into by the respondent it was found that the respondent had not taken care to attend the said guests and workman was warned for his negligent conduct. On 21st January, 1983 when the workman was on duty from 2:00 pm to 10:00 pm, he developed intimacy with the guests staying in room No. 29 and was instrumental in procuring a girl for these guests. He was also found moving around in Punjab Bhawan under the influence of liquor. As the workman was on probation and as he was not found performing his duties satisfactorily, his case along with his service record was placed before the competent authority to take a

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decision. The competent authority after going through the past record of the workman took a decision to simply terminate his service. The incident of 21st January, 1983 may be the motive of the respondent for making such decision but not the foundation. Accordingly, vide order dated 13th February, 1983, the services of the respondent were terminated on the ground of unsatisfactory record of service without attaching any stigma by an order simplicitor. It was submitted that the judgment passed by the learned Single Judge is perfectly legal and valid.

(ii) The Single Judge in exercise of his extraordinary and supervisory jurisdiction has held that the appellant was only a probationer and served for a period of about two years. Therefore, the compensation was awarded in lieu of reinstatement of appellant though in such cases, Section 25-F of Industrial Disputes Act, 1947 will not be applicable but since learned Judge has given compensation of Rs.30,000/- the same has been accepted by the department. The same is in conformity with the law laid down by Hon'ble Supreme Court in various decisions.

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8. It is not in dispute that the services of appellant were terminated while he was still on probation, by the order dated 13.02.1983. This order in so far as it is relevant read as follows:-

“

ORDER

WHEREAS Sri Mohinder Mandal was appointed as Waiter, Punjab Bhawan, New Delhi vide Punjab Government Memo No. 12/78/8 Estt. I(7)/1980, dated 23.12.1980 and was placed on probation for a period of two years in the first instance.

AND WHEREAS the period of probation is extendable upto the maximum of three years and it stands automatically extended after the expiry of its first term without any formal orders issued in this regard.

Now, therefore, under Rule 8(3)(c) of the Punjab State (Class IV) Service Rules, 1963, the services of Shri Mohinder Mandal, Waiter, Punjab Bhawan, New Delhi, being no longer require are terminated with immediate effect.

*Dated Chandigarh
the 18th Feb. 1983*

*Satya Pal Sharma
Under Secretary Sectt. Admn.”*

9. The learned counsel for both the parties have cited a number of decisions before us in support of their respective cases. On going through them, we are of the view that there is not much divergence in them as to the true legal principles to be followed in matters of this nature but the real issue appears to be one of application to those principles in a given case in determining whether the particular action taken amounts to a punishment or mere discharge simplicitor.

10. In *Mathew P. Thomas vs. Kerala State Civil Supply Corpn. Ltd. and others*, (2003) 3 SCC 263, the respondent/corporation terminated the services of the appellant who was a probationer, on charges of grave misconduct and repeated dereliction of duty tantamounting to unsatisfactory performance. It was alleged that he had betrayed as a responsible officer of the corporation by accepting the substandard quality goods in collusion with suppliers for undue pecuniary benefits. The termination orders were upheld by the learned Single Judge and affirmed by the Division Bench. While dismissing the appeal, it was held by the Supreme Court that the penalty of terminating the services of the appellant was proposed in terms of clause 2 of the appointment order because his services were found to be unsatisfactory. Though para 4 and 5 of the show cause notice contain serious allegations of misconduct but they were not the basis for passing the order of termination. They even stood deleted as per the directions given by the High Court. That being the position, no prejudice is caused to the appellant to complain that the High Court has exceeded its power of judicial review when such a deletion of para 4&5 from the show cause notice is to the benefit and advantage of the appellant. The Supreme Court took note of the fact that an order of termination simplicitor passed during the period of probation

has been generating undying debate. Reference was made to two decisions in *Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & Ors.*, (1999) 3 SCC 60 and *Pavanendra Narayan Verma vs. Sanjay Gandhi PGI of Medical Sciences and Anr.*, (2002) 1 SCC 520.

11. In the case of *Dipti Prakash Banerjee* (supra), after referring to various decisions indicated as to when a simple order of termination is to be treated as "founded" on the allegations of misconduct and when complaints could be only as motive for passing such a simple order of termination. In para 21 of the said judgment the distinction is explained, thus:-

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstances, the allegations would be a motive and not the foundation and the simple order of termination would be valid."

12. In *Pavanendra Narayan Verma* (supra), it was held:-

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full scale formal enquiry (b) into

allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been held.

22. The three factors are distinguishable in the following passage in **Shamsher Singh v. State of Punjab** (supra) where it was said:

"Before a probationer is confirmed the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude the probationer is unsuitable for the job and hence must be discharged. No punishment is involved in this. The authority may in some cases be of the view that the conduct of the probationer may result in dismissal or removal on an inquiry. But in those cases the authority may not hold an inquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. If, on the other hand, the probationer is faced with an enquiry on charges of misconduct or inefficiency or corruption and if his services are terminated without following the provisions of Article 311(2) he can claim protection."

13. Following these decisions, it was held as under:-

"From a long line of decisions it appears to us that whether an order of termination is simplicitor or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simplicitor falling in one or the other category, based on misconduct as foundation for passing the order of termination simplicitor or on motive on the ground of unsuitability to continue in service. If the form and language of the so called order of termination simplicitor of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go into the details of the background and surrounding circumstances in testing whether the order of termination is simplicitor or punitive. In cases where the services of a probationer are terminated

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by an order of termination simplicitor and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simplicitor but the real face behind it is to get rid of services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simplicitor to find out what in reality is the background and what weighed with the employer to terminate the services of a probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he in reality is removed from service on the foundation of his misconduct."

12. In the present case, even on earlier occasions when the appellant failed to perform his duties properly during probation period he was warned to improve and continued in the service. If he was to be removed from service on the allegations of misconduct at that time itself the respondents could have removed him from service. This is also a circumstance to indicate that his order of termination was simplicitor. Therefore, having regard to the particular facts and circumstances and in view of what is stated above we have no good reason to disagree with the impugned order."

14. In **Governing Council of Kidwai Memorial Institute of Oncology, Bangalore** (supra), the order under challenge was order of termination simplicitor, the validity thereof was questioned by the employee on the ground that a penal order had been passed in the garb of termination.

Supreme Court observed as under:

"If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is

on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of the termination it really amounted to his removal from service on a charge as such penal in nature.

The principle of tearing of the veil for finding out the real nature of the order shall be applicable only in a case where the Court is satisfied that there is a direct nexus between the charge so levelled and the action taken. If the decision is taken, to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee then it cannot be said that it amounts to his removal from service as punishment. It need not be said that the appointing authority at the stage of confirmation or while examining the question as to whether the service of such employee be terminated during the continuance of the period of probation, is entitled to look into any complaint made in respect of such employee while discharging his duties for purpose of making assessment of the performance of such employee.

Thus in the present case the Governing Council examined different reports in respect of the probationer during period of probation and considered the question as to whether he should be allowed to continue in the service of the Institute. The decision was taken by the Governing Council on the total and overall assessment of the performance of the probationer in terms of the condition of the appointment. It cannot therefore be said that the order of termination amounts to removal from service as a punishment."

15. Recently, the matter was again considered in **Kailash Chand vs. DTC** reported in 217 (2015) DLT 698 wherein the distinction between the order simplicitor and punitive order has been explained by referring to the catena of apex Court decisions as under:

"26. From the aforesaid decisions, we can safely conclude that the legal position which emerges is that where an inquiry is conducted into an alleged misconduct committed by the probationer behind his back and a simple order of termination is passed 'founded' on the report of the inquiry indicting the probationer, the action of termination of services of probationer would be tainted. But where no findings are arrived at

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any inquiry or no inquiry is held but the employer chooses to discontinue the services of an employee against whom complaints are received it would be a case of the complaints 'motivating' the action of termination of services of probationer and hence would not be tainted."

16. What can be culled out from the aforesaid decisions is that the test is whether the misconduct or negligence is a mere motive for the order of the termination of service or whether it is the very foundation of the order of termination of service of the temporary employee. Three communications spreading over a period of about 8 months were issued to the appellant in relation to his services wherein on first occasion, he was found to have left his duty before time causing inconvenience to the guests; on the second occasion, he went on unauthorized leave; on the third occasion, he did not attend to one of the guests properly. The alleged incident involving the procurement of a girl for one of the guests in the guest house for immoral purposes may have only acted as a trigger for the respondent to arrive at its decision to terminate the services of the respondent while he was on probation. The appellant was not charge sheeted nor any show cause notice was issued to him levelling charges against him and consequently no inquiry was held in that regard. It appears that the appellant sought to drag issue of his involvement in procuring a girl for a guest in the guest house for immoral purposes before the Labour Court as a foundation for the

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respondent/management to terminate his services. However, the termination of the services of the appellant was not, because on an inquiry the appellant was found guilty of his conduct. No inquiry was held, no findings were recorded and there were no finding that the appellant was guilty of misconduct. Not one but several facets had served as a motive for terminating the services of the appellant. The last incident was not the foundation for the action taken against the appellant. There were other earlier incidents of unsatisfactory conduct of the appellant. The overall conduct during the probation period was unsatisfactory. Keeping in view the same, the management decided to discontinue the services of the appellant while he was still on probation. The same cannot be termed as punitive or stigmatic. No such statement is recorded in the termination order.

17. Despite holding in para 29 of award that it was not obligatory on the part of the management to hold an inquiry against the workman during the probation period for terminating his services without casting any stigma while passing an order of termination simplicitor and there was no illegality in the order of termination of the workman by the management and there was no violation of any law by the management, yet the

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Industrial Adjudicator resorted to the concept of piercing the veil which was not warranted in the facts and circumstances of the present case.

18. Learned Single Judge, relying on Section 25F of the Industrial Disputes Act, held that the appellant was serving since 22nd December, 1980 and his services were terminated on 13th February, 1983 and it was not the case of the management that the appellant had not been serving continuously or that he had not rendered 240 days of service in the year preceding his termination, therefore, retrenchment was held to be illegal. However, keeping in view the fact that he was only a probationer and had no right to the post till he got confirmed and had served for a little over two years, he was not entitled to reinstatement in service automatically and taking note of the shift in the law as observed by the Supreme Court in *Jagbir Singh* (supra), he was awarded compensation of Rs.30,000/-.

19. It is to be noted that there was no plea of retrenchment by either party either before the Labour Court or before the learned Single Judge as it was a case of termination simplicitor. However, the said finding is not under challenge in this appeal, therefore, we need not dwell on this aspect of the matter.

20. The only question left for consideration is whether the learned Single Judge fell in error in interfering with the award passed by the

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Industrial Adjudicator while exercising jurisdiction under Article 226/227 of the Constitution of India. Heavy reliance has been placed by the learned counsel for the appellant on *Harjinder Singh* (supra). In this case, the Supreme Court did interfere with the order of the High Court which awarded compensation to the workman by modifying the award of reinstatement passed by the Labour Court. However, on close scrutiny of facts it transpires that that was a case where a workman was initially employed by Punjab State Warehousing Corporation as work-charge motor mate but after few months he was appointed as work munshi in the regular pay-scale for three months. His service was extended from time to time and later on by one month's notice given by the Managing Director of the Corporation his service was brought to an end on 05.07.1988. The workman challenged the implementation of the notice in a writ petition and by an interim order the High Court stayed the implementation of that notice but later on the writ petition was withdrawn with liberty to the workman to avail his remedy under the Industrial Disputes Act. After two months, the Managing Director of the Corporation issued notice dated 26.11.1992 for retrenchment of the workman along with few others by giving them one month's pay and allowances in lieu of notice as per the requirement of Section 25-F(a) of

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the Industrial Disputes Act. On the industrial dispute being raised, the Labour Court found that there was compliance of Section 25-F but it was found that the termination was violative of Section 25-G of the Industrial Disputes Act and, accordingly, Labour Court passed an award for reinstatement of the workman with 50 per cent back wages. The Single Judge of that High Court did not approve the award of reinstatement on the premise that the initial appointment of the workman was not in consonance with the statutory Regulations and Articles 14 and 16 of the Constitution and accordingly, substituted the award of reinstatement with 50 per cent back wages by directing that the workman shall be paid a sum of Rs.87,582/- by way of compensation. This order of the Single Judge was set aside by the Supreme Court and order of the Labour Court restored by observing that Single Judge was wrong in entertaining an unfounded plea that workman was employed in violation of Articles 14 and 16. This judgment was considered in *Asstt. Engineer, Rajasthan Dev. Corporation and Anr. vs. Gitam Singh*, (2013) 5 SCC 136 and it was held that *Harjinder Singh* (supra) turned on its own facts. It was further held that *Harjinder Singh* does not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. It was further held:

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"26. From the long line of cases indicated above, it can be said without any fear of contradiction that this Court has not held as an absolute proposition that in cases of wrongful dismissal, the dismissed employee is entitled to reinstatement in all situations. It has always been the view of this Court that there could be circumstance(s) in a case which may make it inexpedient to order reinstatement. Therefore, the normal rule that dismissed employee is entitled to reinstatement in cases of wrongful dismissal has been held to be not without exception. Insofar as wrongful termination of daily-rated workers is concerned, this Court has laid down that consequential relief would depend on host of factors, namely, manner and method of appointment, nature of employment and length of service. Where the length of engagement as daily wager has not been long, award of reinstatement should not follow and rather compensation should be directed to be paid. A distinction has been drawn between a daily wager and an employee holding the regular post for the purposes of consequential relief."

21. **Deepali Gundu Sarvase** (supra) was dealing with the case of wrongful termination of service wherein while ordering reinstatement with continuity of services, back wages were not granted. It was held that since action taken by the management to terminate the appellant's service was *per se* illegal, while ordering reinstatement with continuity of service, back wage was the normal rule.

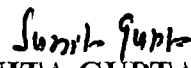
22. Things are entirely different in the instant case. The termination of the appellant was held to be legal by the Industrial Adjudicator, however, it went on "lifting the veil" for arriving at the conclusion that the same was unjustified. However, the facts and circumstances of the case did not warrant lifting the veil. Thus there was an error in the decision making. A wrong principle was applied. While awarding the

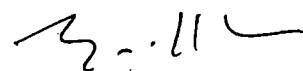
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compensation, several factors, *inter alia* manner and method of appointment, nature of appointment and length of service are relevant. In a case such as this, where a total length of service rendered by the appellant was short and he was only on probation, in our considered view since the termination was legal and justified even no compensation was required to be given to him. However, since the management has accepted awarding compensation, we do not see any reason to interfere with the said findings of the learned Single Judge.

23. That being so, the appeal being devoid of merit, is dismissed.

No order as to costs.


SUNITA GUPTA
JUDGE


SANJIV KHANNA
JUDGE

SEPTEMBER 23, 2016

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