

**IN THE HIGH COURT OF UTTARAKHAND**

**AT NAINITAL**

**HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI**

**AND**

**HON'BLE SRI JUSTICE RAKESH THAPLIYAL**

**WRIT PETITION (S/B) NO. 617 OF 2021**

**03<sup>RD</sup> JULY, 2023**

**BETWEEN:**

Sheela Dhyani

.....Petitioner.

And

Registrar, HNB Garhwal University

....Respondent.

Counsel for the Petitioner : Mr. Vinod Nautiyal, learned counsel.

Counsel for the Respondent : Dr. Kartikey Hari Gupta, learned counsel assisted by Ms. Irum Zeba, learned counsel.

**The Court made the following:**

**JUDGMENT:**(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The petitioner-workman has filed this petition to assail the Award dated 04.03.2021, passed by the Presiding Officer, C.G.I.T-Cum-Labour Court-II, New Delhi in Industrial Dispute Case No.97/2011.

2. By the impugned Award, while holding that the petitioner's services were terminated in breach of Section 25-F of the Industrial Disputes Act, the petitioner has been awarded compensation of Rs.10.00 lakhs, instead of reinstatement.

3. The grievance of the petitioner is that the petitioner should have been directed to be reinstated in service with full back wages rather being awarded compensation of Rs.10.00 Lakhs. The petitioner had rendered service between

31.05.1996 to 31.03.2001 when her services were terminated. No doubt, the termination of the petitioner has been found to be illegal. However, after her termination, she has remained out of service with the respondent-University till the passing of the impugned Award on 04.03.2021, i.e. for a period of twenty years.

4. Considering the fact that the petitioner had rendered about five years of service, and thereafter, remained out of service for 20 years, in our view, the Tribunal was justified in invoking the principles laid down by the Supreme Court in ***Hari Nandan Prasad vs. Food Corporation of India, (2014) 7 SCC 190***, wherein the Supreme Court has held as follows:-

*"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. 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 be 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 wager has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post of a permanent employee. The 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 under Section 25-F of the Industrial Dispute Act, even after reinstatement it is always open to the*

*management to terminate the services of that employee by paying him the retrenchment compensation”.*

5. It is well-settled that reinstatement in service with or without back wages is not automatic, and it would depend on the facts and circumstances of each case whether such a relief should be granted to the workman whose services are found to be illegally terminated in breach of Section 25-F, or any other provision of the Industrial Disputes Act.

6. Learned counsel for the petitioner has not been able to point out any illegality requiring us to intervene in the matter, and interfere with the impugned Award in judicial review.

7. The petition is accordingly dismissed.

8. Pending application, if any, also stands disposed of.

**(VIPIN SANGHI, C.J.)**

**(RAKESH THAPLIYAL, J.)**

Dated: 03<sup>rd</sup> July, 2023

NISHANT