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

% ***Date of Decision: August 20th, 2026***

\# **CNR No. DLHC010709232005**

\+ **W.P.(C) 5362/2005 & CM APPL. 3927/2005**

INST.OF HUMAN BEHAVIOUR & ALLI .....Petitioner

Through: Mr. Tushar Sannu and Mr. Parvin Bansal, Advs.

versus

RAMESHWAR & ANR. .....Respondents

Through: Mr. Hanu Bhaskar and Ms. Anmol Bhaskar, Advs.
Mr. Abhinav Singh and Ms. Pearl Khurana, Advs. for GNCTD.

\# **CNR No. DLHC010667882005**

\+ **W.P.(C) 18083/2005 & CM APPL. 11696/2005**

INSTITUTE OF HUMAN BEHAVIROUR .....Petitioner

Through: Mr. Tushar Sannu and Mr. Parvin Bansal, Advs.

versus

RAVINDER KUMAR SARASWATI & ANR.....Respondents

Through: Mr. Hanu Bhaskar and Ms. Anmol Bhaskar, Advs.
Mr. Abhinav Singh and Ms. Pearl Khurana, Advs. for GNCTD.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present petitions are filed under Article 226 of the Constitution of India assailing awards dated 02.09.2004 passed by the

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learned Labour Court in I.D. No. 37/1998 and 38/1998 whereby the workmen were awarded reinstatement with continuity of services alongwith full back wages.

2. Briefly stated, the respondent workman in W.P.(C)18083/2005, was engaged as a peon, by the petitioner, by virtue of office order dated 22.05.1995 for a period of 89 days. After the expiry of the aforesaid period, the workman was once again appointed to the said post for a period of 89 days *vide* letter dated 16.08.1995. The same pattern was subsequently followed repeatedly by the petitioner till 22.02.1997 with the following letters:

i. Letter dated 23.11.1995 (from 22.11.1995 to 18.02.1996),
ii. Letter dated 23.02.1996 (from 21.02.1996 to 20.05.1996),
iii. Letter dated 16.05.1996 (from 23.05.1996 to 19.08.1996),
iv. Letter dated 27.08.1996 (from 24.08.1996 to 20.11.1996) and
v. Letter dated 28.11.1996 (from 26.11.1996 to 22.02.1997)

3. Similarly, the respondent workman in W.P.(C) 5362/2005 was engaged as a peon *vide* office order dated 27.09.1994 for a period of 89 days. Thereafter, the workman was similarly issued different appointment letters for 89 days till 21.12.1996. The letters issued to the said workman are as follows:

i. Letter dated 28.12.1994 (w.e.f 19.12.1994 for 89 days)
ii. Letter dated 16.3.1995 (for the period w.e.f. 22.3.1995),
iii. Letter dated 14.09.1995 (for the period w.e.f. 22.9.1995 to 19.12.1995),
iv. Letter dated 28.12.1995 (for the period w.e.f. 23.12.1995 to

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20.3.1996),

v. Letter dated 20.03.1996 (for the period w.e.f. 23.03.1996 to 19.06.1996),

vi. Letter dated 27.06.1996 (for the period w.e.f. 23.06.1996 to 19.9.1996) and

vii. Letter dated 25.09.1996 (for the period w.e.f. 24.09.1996 to 21.12.1996).

4. It is alleged that when the workmen reported for duty after the expiry of the period of engagement in their last appointment letter, they were not allowed to resume duty. Thereafter, the workmen issued demand notices to the petitioner alleging that they had been working continuously with the petitioner for a period of two years before being terminated without following the procedure under the Industrial Disputes Act, 1947 ('**I.D. Act**'). Conciliation proceedings were held, which did not yield any result and thereafter, references were made to the learned Labour Court in each of the workmen's cases.

5. The learned Labour Court observed that the petitioners had terminated the services of the workmen without following the procedure established under Section 25F of the I.D. Act. Thus, the learned Labour Court awarded reinstatement with continuity of services alongwith full back wages to the workmen.

6. Aggrieved thereby, the present petition has been filed.

7. The workman in W.P(C) 5362/2005 expired during the pendency of the present petition and LRs of the workman were impleaded *vide* order dated 21.03.2011.

8. The learned counsel of the petitioner submits that the workmen

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were engaged as daily wagers for a fixed period for 89 days and their services were, thereafter, taken from time to time as per the requirement. He submits that the workmen were only terminated pursuant to expiry of the said period and would thus fall under the exception contained under Section 2(oo)(bb) of the ID Act.

9. He submits that since the termination of the workmen would fall under the exception contained under Section 2(oo)(bb) of the ID Act, the petitioner did not have to follow the procedure prescribed under Section 25F of the ID Act before terminating the workmen.

10. He further submits that the workmen did not complete 240 days of continuous service in a year with the management since there were multiple breaks between different appointment letters issued to each of the workmen.

11. The learned counsel appearing for the respondents vehemently opposes the present petition. He submits that no grounds have been raised by the petitioner to warrant interference of this Court under Article 226 of the Constitution.

12. I have heard the arguments and perused the record.

13. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India with an Award passed by the Labour Court is limited. Interference is warranted only where the Award suffers from patent illegality, perversity or an error apparent on the face of the record. The present Petition does not invite this Court to re-appreciate the evidence or disturb findings of fact but is confined to examining the legality and propriety of the relief granted by the Labour Court.

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14. Though it has been contended by the petitioner that the employment of the workmen in the present case was purely contractual and the same would fall within the exception contained under Section 2(oo)(bb) of the ID Act, the said contention is untenable.

15. Under Section 2(oo) of the ID Act, retrenchment has been defined to mean as under:

> *""retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—*
> *(a) voluntary retirement of the workman; or*
> *(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or*
> ***(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or***
> *(c) termination of the service of a workman on the ground of continued ill-health"*

16. It is well settled that where the management pleads that the exception contained under Section 2 (oo)(bb) of the ID Act is attracted in a particular case, the burden of proof to establish the same would be upon the management. Further, the management would have to prove that the workmen had been appointed for a specified work which is of a temporary nature and only required for a specified period. Reliance in this regard is placed upon the judgment in ***S.M Nilajkar v. Telecom District Manager* : (2003) 4 SCC 27** where the Hon'ble Apex Court observed as under:

> *13. The termination of service of a workman engaged in a scheme*

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or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:
(i) that the workman was employed in a project or scheme of temporary duration;
(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;
(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and
(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of the employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.

17. In the opinion of this Court, the learned Labour Court rightly reached the conclusion that the petitioner had not been able to prove that the employment of the workmen was for work which was of temporary nature and only required for a specified period, so as to fall

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within the definition of Section 2(oo)(bb) of the ID Act.

18. It is pertinent to note that in the present case, the workmen were engaged to work as Peons with the petitioner, such work undisputedly cannot be termed to be one of temporary or irregular nature which is only required for a specified period. Further, it is relevant to note that the services of the workmen were extended from time to time through various appointment letters with only intermittent breaks of a few days. The repeated extensions of the workmen's employment itself establishes that the work for which they were engaged was not only required for a specific period.

19. Further, the petitioner repeatedly engaged the workmen, through various appointment letters, for 89 days, with intermittent breaks of a few days for a period of 2 years. The learned Labour Court rightly observed that engagement of the workmen was continued for a continuous period of almost two years and intermittent breaks were imposed in between by the petitioner in colourful exercise of its power of appointment, merely to try and portray that engagement of the workmen was not continuous.

20. Thus, the contention of the petitioner that the workmen did not complete 240 days of continuous service on account of the breaks between their appointment letters also holds no water.

21. In view of the above, the findings of the learned Labour Court with regard the illegal termination of the workmen are well reasoned and do not warrant interference of this Court.

22. However, be that as it may, this Court cannot lose sight of the fact that mere finding of wrongful termination/discontinuation does

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not by itself grant a right of reinstatement or back wages to the aggrieved employee.

23. It is trite law that a finding of illegality in termination does not, by itself, mandate reinstatement in every case. The Hon'ble Apex Court has repeatedly held that reinstatement is not an automatic or mechanical consequence of an order of termination being held illegal and that the relief must be moulded having regard to the nature of employment, length of service and the surrounding circumstances of the case. In ***Allahabad Bank v. Krishan Pal Singh*** **: (2021) 19 SCC 227**, the Hon'ble Supreme Court has held that reinstatement with full back wages is not automatic in every case where termination or dismissal is found to be not in accordance with the procedure prescribed under law and that the relief can be moulded depending upon the facts and circumstances of the case. The relevant extract of the same is reproduced hereinbelow:

> *"8. The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23-8-2019 [Allahabad Bank v. Krishan Pal Singh, 2019 SCC OnLine SC 2061] . During the pendency of these proceedings, the respondent workman had attained age of superannuation. Though, there was strong suspicion, there was no acceptable evidence on record for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court. The reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law. Considering that the respondent was in effective service of the Bank only for about six years and he is out of service since 1991, and in the meantime, respondent had attained age of superannuation, we deem it appropriate that ends of justice would be met by awarding lump sum monetary compensation. We accordingly direct payment of lump sum compensation of Rs 15 lakhs to the respondent, within a period of eight weeks from today.*

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Failing to pay the same within the aforesaid period, the respondent is entitled for interest @ 6% p.a., till payment."

24. Hence, it is well crystallised that where the facts so warrant, the Court is empowered to award monetary compensation in lieu of reinstatement, in such cases where reinstatement is not feasible, and where such relief of compensation would better serve the ends of justice.

25. This Court though upholds the finding of the learned Tribunal that the termination of services, of the workmen, was illegal, however, it remains undisputed that the respondent workmen only worked for about two years between 1994 to 1997 and almost three decades have elapsed thereafter.

26. Therefore, the ends of justice would be served if the award of lumpsum compensation of ₹3,00,000/- each is given to the workmen (workman in W.P.(C) 18083/2005 and LRs of the workman in W.P.(C) 5362/2005). The compensation shall be paid within a period of eight weeks, failing which the petitioner shall be liable to pay penal interest at the rate of 12% per annum.

27. The workmen shall not be entitled to any other amount in the form of compensation / allowance.

28. The impugned orders are modified and the present petitions are disposed of in the aforesaid terms.

29. Pending applications also stand disposed of.

30. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

AUGUST 20, 2026/*'KDK'*

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