



2026:DHC:6632



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 07.08.2026

CNR No. DLHC011476822018

+ W.P.(C) 8877/2018

M/S BALVANTRAY MEHTA VIDYA BHAWAN ANGURIDEVI
SHERSINGH MEMORIAL ACADEMY Petitioner

Through: Dr.Meenakshi Kalra, Ms.Sakshi
Gupta, Ms.Anjali C., Mr.Kamal,
Mr.Mayank, Ms. Vrinda, and Mr.S.N.
Kalra, Advocates

versus

SMT. LEELAWATI Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI****JUDGMENT (ORAL)**

1. The present writ petition has been preferred by the petitioner/management challenging the award dated 05.05.2018 passed by the learned Presiding Officer, Labour Court-V, Dwarka Courts in New ID No. 4718/16, whereby monetary compensation of Rs.1,00,000/- was awarded to the respondent/workwoman while denying her claim for reinstatement.
2. The dispute was referred to the Labour Court in terms of the following reference:

“Whether Smt. Leelawati W/o Sh. Gopal Chand absented from her duties unauthorisedly (sic) or her services have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as

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monetary relief along with other consequential benefits in terms of existing laws/Govt. Notifications and to what other relief is she entitled and what directions are necessary in this respect?”

3. Briefly stated, the workwoman claimed before the Labour Court that she was working on a permanent post of ‘Aaya’ with the management school w.e.f. January 2010, and her last drawn wages were Rs.6,000/- per month. She alleged that on 01.07.2010, the management issued an offer of appointment stating that she would be appointed on a purely contractual basis, and thereafter issued similar contractual offers from time to time without serving notice under Section 9A of the Industrial Disputes Act, 1947 (hereinafter the “ID Act”) to alter her status from a permanent employee. She asserted that this device of contractual employment was a sham mechanism used to deny her regular service benefits. The workwoman further asserted that upon demanding full wages of Rs.6,000/- for April and May 2011, as against the sum of Rs.3,000/- actually paid to her, her services were illegally terminated on 13.05.2011 in violation of Sections 25F, 25G, and 25H of the ID Act, despite having rendered continuous service for over 240 days as contemplated under Section 25B of the ID Act.

4. The management contested the claim by stating that the workwoman was appointed purely on a contractual basis against a temporary post. It was submitted that after her initial engagement as a trainee from 13.01.2010 to 31.03.2010, she was re-engaged contractually from 01.07.2010 to 31.03.2011. Upon notice, she re-applied on 15.02.2011, leading to an extension from 01.04.2011 to 13.05.2011. The management maintained that her contractual engagement naturally expired on 13.05.2011 and that she never re-applied thereafter. It was further submitted that during the final



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tenure, the workwoman had remained on unauthorized leave for 10 days in April 2011 and 6 days in May 2011.

5. In the aforesaid backdrop, the following issues were framed by the Labour Court:

- “1. *Whether the workman was appointed on contractual basis against a temporary post of Aaya? OPM*
2. *If issue no.1 is decided in favour of the workman, whether his services were illegally and/or unjustifiably terminated by the management? OPW*
3. *Relief.”*

6. The Labour Court decided issue no. 1 against the management, holding that the workwoman had completed 288 days of continuous service under Section 25B of the ID Act and thus fell within the definition of a “workman” under Section 2(s) of the ID Act. *Qua* issue no. 2, the Labour Court held that the workwoman’s termination without complying with Section 25F of the ID Act was illegal. As for relief under issue no. 3, while denying reinstatement, the Labour Court awarded monetary compensation of Rs.1,00,000/- to the workwoman. Aggrieved by the award, the management has preferred the present writ petition.

7. A perusal of the proceedings reveals that while the respondent/workwoman was initially represented through counsel upon service of notice, none has appeared on her behalf for the past several years. In view of her continued non-appearance, *vide* order dated 06.03.2023, this Court had directed that Court notice be issued to the learned counsel for the respondent. The Office Noting reflects that since no address for the learned counsel was available on record, the Court Notice was issued directly to the workwoman at her recorded address. The same was duly served. However,



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despite repeated service, none has appeared on her behalf. Accordingly, this Court proceeds to consider the matter on merits.

8. Learned counsel for the petitioner/management contends that the Labour Court erred in holding that the workwoman had completed 240 days of continuous service, ignoring the periodic breaks in her contractual engagements as well as her unauthorized absences of 10 days in April 2011 and 6 days in May 2011.

9. I have heard the learned counsel for the petitioner/management and examined the record.

10. Before proceeding further, this Court takes note of the limited scope of writ jurisdiction in exercise of powers conferred under Articles 226/227 of the Constitution of India. It is well settled that the challenge is not in the nature of an appeal, but to see if the order has been passed without jurisdiction, is perverse, or does not follow the principles of natural justice (Ref: Syed Yakoob Vs. K.S. Radhakrishnan¹). The said principle was reiterated by the Supreme Court in International Airport Authority of India Vs. International Air Cargo Workers Union². This Court has also considered the scope of writ jurisdiction in Ritz Theatre Private Limited Vs. Ramesh Chandra³.

11. A perusal of the record reveals that while considering issue no. 1, the Labour Court calculated the period of service rendered by the workwoman between 01.07.2010 to 13.05.2011 and, even after excluding the period of alleged unauthorized absence of 16 days (10 days in April 2011 and 6 days in May 2011), the total days worked in the 12 calendar months preceding her termination came to 288 days, thereby satisfying the requirement of

¹ 1963 SCC OnLine SC 24

² (2009) 13 SCC 374

³ 2024 SCC OnLine Del 3633



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continuous service as contemplated under Section 25B of the ID Act. This Court in *Delhi Cantonment Board Vs. CGIT & Ors.*⁴ has held that the ID Act makes no distinction between a permanent employee and a temporary employee, whether a probationer, casual, daily wager or ad hoc employee, and as long as a person is employed to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, they would fall within the definition of “workman” under Section 2(s) of the ID Act and be entitled to its protection, and where such workman has put in 240 days of service, compliance with Section 25F is a condition precedent to termination, failing which such termination would be illegal.

12. Furthermore, the Labour Court observed that the management failed to prove that the post of ‘Aaya’ was temporary, as a school requires such services on a continuous basis. Taking note of the admission that the management itself called upon the workwoman to re-apply whenever her contract period was nearing completion, the Labour Court rightly considered the contract to be a mere device to avoid statutory obligations.

13. Insofar as issue no. 2 is concerned, once the workwoman was held to be a “workman” under Section 2(s) of the ID Act who had completed continuous service of 240 days, her separation from service without adhering to the statutory requirements of Section 25F of the ID Act inevitably rendered the termination illegal.

14. Turning to the relief granted under issue no. 3, the Labour Court declined reinstatement, and instead awarded monetary compensation of Rs.1,00,000/-. A gainful reference may be made to *Jagbir Singh Vs. Haryana*

⁴2006 SCC OnLine Del 97



State Agriculture Mktg. Board⁵, wherein the Supreme Court clarified that reinstatement with back wages is not automatic, and in appropriate cases, compensation may be granted instead, observing as under:

“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.”

15. Similarly, the Supreme Court in Bharat Sanchar Nigam Limited Vs. Bhurumal⁶ observed that in cases where termination is found to be illegal due to procedural defects, compensation in place of reinstatement may be appropriate:

“33. 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 mala fide and/or by way of victimisation, 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 a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that 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.

34. 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 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

⁵(2009) 15 SCC 327

⁶(2014) 7 SCC 177



even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1: 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation 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.

35. 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 that 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 regularised under some policy but the workman concerned 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.”

16. In the present case, the events relate back to 2010-2011, and a considerable period of time has elapsed since the termination of the workwoman's services. Taking into account the length of service rendered and the nature of duties, this Court is of the considered opinion that the quantum of compensation determined by the Labour Court is just, fair, and reasonable, and cannot be termed as perverse or arbitrary so as to warrant interference under writ jurisdiction.

17. Accordingly, the present writ petition is dismissed. The amount of Rs.1,00,000/- deposited with the Registrar General of this Court pursuant to the order dated 08.07.2019, along with any interest accrued thereon, shall be released to the respondent/workwoman.

18. The Registry is directed to communicate a copy of this order forthwith to the respondent/workwoman at her recorded address as well as to the



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counsel who had previously entered appearance on her behalf in the present proceedings, by way of written communication.

(MANOJ KUMAR OHRI)
JUDGE

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