

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 82 of 2015

1. State Of Chhattisgarh Through The Secretary, Department Of Water Resources, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)

(The petitioner No.1 was not a party before the learned Labour Court but has been impleaded as petitioner No.1 in the instant petition as the proper course is to implead the State Government through the Secretary of the concerned department)

2. The Executive Engineer, Water Resources Division Chhuikhadan, District Rajnandgaon (Chhattisgarh)

---- Petitioner

Versus

1. Mayaram Sahu S/o Tulsi Sahu, No. R/o Village Jujhara, P.S. And Tahsil Chhuikhadan District Rajnandgaon (Chhattisgarh)
2. The Labour Court, Rajnandgaon District Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioner/State
For Respondent No.1

Shri Shashank Thakur, GA
None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board By

17/08/2015

Perused.

1) The petitioner/State/employer has preferred the instant writ petition against the award dated 29.11.2014 passed by the Labour Court, Rajnandgaon, whereby the Labour Court directed the State to reinstate the respondent workman in service within a period of 30 days without back wages.

2) Learned counsel appearing for the State would submit that in 2007, the services of the respondent workman was taken on daily wage basis, however, on account of non-requirement of the services of the respondent workman, he was removed from the service in 2008. Being aggrieved, the respondent workman raised an industrial dispute. In the said matter, the State submitted the reply. The Court below, according to the learned counsel for the State, has not at all appreciated the facts and circumstances of the case in its letter and spirit. The respondent workman was not in service against the sanctioned post and as such, the provisions of the Industrial Disputes Act, 1947 would not be applicable to the facts of the case at hand. Learned counsel would next submit that at the most, instead of reinstatement, the respondent workman would be entitled for monetary compensation.

3) On 19.06.2015, this Court issued notices to the respondent workman, however, despite service of notice, the respondent workman has not appeared before this Court.

4) The identical issue has already been considered and decided by the learned single Judge of this court in the State of Chhattishgarh &

Another v. Dhaniram¹, and other connected writ petitions and instead of reinstatement, monetary compensation has been awarded. The said decision has been affirmed by the Division Bench of this Court in *Brij Nandan Chandra v. State of Chhattisgarh and another*² and other connected writ appeals and even the same has also been affirmed by the Supreme Court in *Brij Nandan Chandra v. State of Chhattisgarh and another*³.

5) The Supreme Court in the matter of *Bharat Sanchar Nigam Limited v. Man Singh*⁴ has observed as under:

“4. This Court in a catena of decisions has clearly laid down that although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as “daily wagers” and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6. Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Ltd. to pay Rs 2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.”

6) Similar view has been taken by the Supreme Court in *Assistant Engineer, Rajasthan Development Corporation and another v. Gitam*

1 WP (L) No.3034 of 2009 (decided on 2.2.2011)

2 WA No.50 of 2011 (decided on 17.02.2011)

3 Special Leave to Appeal Civil No.15761 of 2011 (decided on 5.7.2011)

4 (2012) 1 SCC 558

*Singh*⁵.

7) Yet again, recently in *Bharat Sanchar Nigam Limited v. Bhurumal*⁶, the Supreme Court has held thus:

“23. 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 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.

24. 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 even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi* (2006) 4 SCC 1: AIR 2006 SC 1806]. 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.”

8) In view of the above facts and circumstances of the case and applying the well settled principles of law to the facts of the present

5 (2013) 5 SCC 136

6 (2014) AIR SCW 528

case, instead of reinstatement, monetary compensation would subserve the ends of justice. Thus, the respondent workman is entitled to a sum of Rs.75,000/- as compensation. Such payment shall be made within a period of 3 months from the date the respondent workman submits representation along with a copy of this order.

9) Since no one appeared on behalf of the respondent workman, in the interest of justice, Registry is directed to send a copy of this order to the respondent workman forthwith.

10) As an upshot, the writ petition is allowed to the extent indicated above. No order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Nirala