

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 86 of 2015

Ramakant Sahu S/o Shri Motilal Sahu, Aged About 49 years, R/O Village-Marod P.O. And P.S.- Marod, Tahsil - Dhamtari, Distt. - Raipur, Now Dhamtari (Chhattisgarh)

---- Petitioner

Versus

1. Chairman, Bilaspur Raipur Kshetriya Gramin Bank, Dayalbandh, Bilaspur (Chhattisgarh)
2. The Central Government Industrial Tribunal Cum Labour Court, Through its Presiding Officer Under The Industrial Disputes Act, 1947 C.G.I.T. Jabalpur (Madhya Pradesh)

---- Respondents

For Petitioner	Shri Vijay Kumar Sahu, Advocate
For Respondents	None

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

23/06/2015

1. With the consent of the learned counsel for the parties, the matter is heard finally.
2. The petitioner has assailed the legality and validity of the impugned award passed by the Central Government Industrial Tribunal (hereinafter for short referred to as 'the CGIT'), whereby the said authority has partly allowed the claim of the petitioner and having found that his termination was not legal and proper, it has awarded Rs.50,000/- as compensation in lieu of reinstatement and Rs.5,000/- as cost of the litigation.

3. Learned counsel for the petitioner would submit that the petitioner is entitled for reinstatement and in the alternative, the amount awarded as compensation is meager. He would further submit that once the retrenchment have been found illegal, the order of reinstatement is the necessary consequence.
4. In the matter of **Hari Nandan Prasad and Another v. Employer I/R to Management of Food Corporation of India and Another**¹ and **Bhuvnesh Kumar Dwivedi v. M/s Hindalco Industries Ltd.**², the Supreme Court has laid down the principle as to when the retrenchment is held illegal, reinstatement would be the necessary consequence. The Supreme Court has also considered as to when payment of compensation in lieu of reinstatement would serve the ends of justice. The following has been held in paras:-
5. In Hari Nandan Prasad (Supra), the Supreme Court has held thus in para 19 & 20 :

“19. The following passages from the said judgment would reflect the earlier decisions of this Court on the question of reinstatement: (*BSNL case*, SCC pp. 187-88, paras 29-30)

“29. The learned counsel for the appellant referred to two judgments wherein this Court granted compensation instead of reinstatement. In *.BSNL v. Man Singh*, (2012) 1 SCC 558, this Court has held that when the termination is set aside because of violation of Section 25-F of the Industrial Disputes Act, it is not necessary that relief of reinstatement be also given as a matter of right. In *Incharge Officer v. Shankar Shetty*, (2010) 9 SCC 126, it was held that those cases where the workman had worked on daily-wage basis, and worked merely for a period of 240 days or 2 to 3 years and where the termination had taken place many years ago, the recent

1 (2014) 7 SCC 190

2 AIR 2014 SC 2258

trend was to grant compensation in lieu of reinstatement.

30. In this judgment of *Shankar Shetty*, this trend was reiterated by referring to various judgments, as is clear from the following discussion: (SCC pp. 127-28, paras 2-4)

‘2. Should an order of reinstatement automatically follow in a case where the engagement of a daily-wager has been brought to an end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short “the ID Act”)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In *Jagbir Singh v. Haryana State Agriculture Mktg. Board*, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, *U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey*, (2006) 1 SCC 479, *Uttaranchal Forest Development Corpn. v. M.C. Joshi*, (2007) 9 SCC 353, *State of M.P. v. Lalit Kumar Verma*, (2007) 1 SCC 575, *M.P. Admn. v. Tribhuban*, (2007) 9 SCC 748, *Sita Ram v. Moti Lal Nehru Farmers Training Institute*, (2008) 5 SCC 75, *Jaipur Development Authority v. Ramsahai*, (2006) 11 SCC 684, *GDA v. Ashok Kumar*, (2008) 4 SCC 261, and *Mahboob Deepak v. Nagar Panchayat, Gajraula*, (2008) 1 SCC 575, and stated as follows: (*Jagbir Singh case*, SCC pp. 330 & 335, paras 7 & 14)

“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.

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically 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-wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily-wager who does not hold a post and a permanent employee.”

4. *Jagbir Singh* has been applied very recently in *Telegraph Deptt. v. Santosh Kumar Seall*, (2010) 6 SCC 773², wherein this Court stated: (SCC p. 777, para 11)

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily-wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice.”

20. Taking note of the judgments referred to in the aforesaid paragraphs and also few more cases in other portion of the said judgment, the legal position was summed up in the following manner: (*BSNL case*, SCC p. 189, paras 33-35)

“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 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.

9.

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 even after he is reinstated, he has no right to seek regularisation [see *State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1. 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.

10.

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 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.”

6. In the case in hand, the petitioner was engaged as temporary messenger for 89 days in the year 1986-87 and thereafter he was again engaged as messenger from 13.03.1990, he was paid wages for the period 21.03.1990 to 29.06.1991. Thus, his first engagement was more than 25 years back and his disengagement was more than 24 years back. Allowing the petitioner to be reinstated would be contrary to the law laid down by the Supreme Court. Since the petitioner's disengagement itself is more than 24 years back, therefore, the amount of compensation in lieu of reinstatement is also not meager. It is not a case, where the CGIT has awarded a sum of Rs.10,000/- or 20,000/- but the compensation is to the tune of Rs.50,000/-.
7. For the foregoing, the writ petition has no substance, it is dismissed in *limine*.

Sd/-

(PRASHANT KUMAR MISHRA)

JUDGE