

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPL No. 173 of 2013**

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

(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. Water Resources Department, Through Chief Engineer (Research), Sinchai Bhavan, G.E. Road, Raipur, Dist Raipur, (C.G.).
3. Water Resources Department , Through Director, Hydro Metrology, Sinchai Bhavan, Raipur, Dist Raipur, (C.G.)
4. Deputy Director, Hydro Metrology Division No.4, Sinchai Colony, Shanti Nagar, Raipur, Dist Raipur, (C.G.)

**---- Petitioner**

**Versus**

1. Shiv Kumar Chandrakar S/o Fekuram Chandrakar, Aged About 39 Years R/o Village Paraswani, Post Birkoni, Tahsil And District Mahasamund, (C. G.)
2. Presiding Officer, Labour Court No.1, Raipur, Dist Raipur, (C.G.)

**---- Respondent**

**And**

**WPL No. 174 Of 2013**

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

(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. Water Resources Department, Through Chief Engineer (Research), Sinchai Bhavan, G.E. Road, Raipur, Dist Raipur, (C.G.).
3. Water Resources Department , Through Director, Hydro Metrology, Sinchai Bhavan, Raipur, Dist Raipur, (C.G.)

4. Deputy Director, Hydro Metrology Division No.4, Sinchai Colony, Shanti Nagar, Raipur, Dist Raipur, (C.G.)

---- **Petitioner**

**Vs**

1. Rajendra Chandrakar S/o Manharan Chandrakar, Aged About 34 Years R/o Village & Post Farfaud, Tah Arang, Dist Raipur, (C.G.)
2. Presiding Officer, Labour Court No.1, Raipur, Dist Raipur, (C.G.)

---- **Respondent**

**And**

**WPL No. 175 Of 2013**

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

(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. Water Resources Department, Through Chief Engineer (Research), Sinchai Bhavan, G.E. Road, Raipur, Dist Raipur, (C.G.).
3. Water Resoureces Department , Through Director, Hydro Metrology, Sinchai Bhavan, Raipur, Dist Raipur, (C.G.)
4. Deputy Director, Hydro Metrology Division No.4, Sinchai Colony, Shanti Nagar, Raipur, Dist Raipur, (C.G.)

---- **Petitioner**

**Vs**

1. Sewan Kumar Chandrakar S/o Ratan Lal Chandrakar Aged About 42 Years R/o Village & Post Guchhapalli Via Bagbahara, Tahsil & Distt. Mahasamund C.G.
2. Presiding Officer, Labour Court No.1, Raipur, Dist Raipur, (C.G.)

---- **Respondent**

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|                                 |                                          |
|---------------------------------|------------------------------------------|
| For Petitioner/State            | Shri Sangarsh Pandey, Dy. Govt. Advocate |
| For Respondent No.1/<br>Workmen | Shri Sudeep Johri, Advocate              |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**C A V Order**

**22/12/2015**

1. Water Resources Department of the State of Chhattisgarh has preferred these three writ petitions challenging the three separate awards passed by the Labour Court, Raipur, directing reinstatement of the respective workmen without backwages. Since the challenge is based on similar facts and legal grounds, all the three writ petitions are disposed of by this common order.
2. Facts of the case, briefly stated, are that the workmen were engaged as Watchman, Gauge Reader and Gauge Reader, in May, 1992, June, 1989 and June, 1998 respectively. They were continued till 31-1-2000 and were disengaged from February, 2000 onwards on the ground that their services are no longer required, as the work is not available. The workmen raised the industrial dispute in the year 2004, which was referred for adjudication to the Labour Court.
3. In their statement of claim the workmen averred that after their disengagement the Department has engaged some other daily wagers; retrenchment compensation was not paid to them; other workmen were employed as Gauge Reader and Helper, therefore, they are entitled for reinstatement in view of the provisions contained in Section 25 H of the Industrial Disputes Act, 1947 (for short 'the ID Act'). It was also stated that permission from the

appropriate Government was not obtained before retrenchment of the workmen, as is required under Section 25 N of the ID Act.

4. The Department defended the claim on submission that the workmen were never engaged on permanent basis; they were, in fact, engaged temporarily depending upon availability of the work; retrenchment compensation has been paid at the time of disengagement/retrenchment; daily wager has not been engaged after 31-12-1988 on the post in which the workmen were working; the persons who have been referred by the workmen in support of their contention under Section 25 H of the ID Act that they were engaged subsequently is incorrect because the said persons were engaged prior to 1988 and were entitled for regularization in terms of the Government circular.
5. On the basis of statement of claim and the oral evidence, the Labour Court concluded that although retrenchment compensation as well as one month salary was paid at the time of retrenchment, permission from the appropriate Government was not obtained before disengaging the workmen. In respect of the plea of engagement of some other daily wagers after the retrenchment of the workmen, the Labour Court did not record any specific finding in respect of any daily wager working in the office where the workmen were working. The Labour Court referred to some other daily wager of Rajnandgaon who was engaged as daily wager in 1996 but was continued. The Labour Court directed reinstatement

on the ground that the workmen have worked for more than 240 days in the immediate preceding calendar year. It was also held that although retrenchment compensation has been paid, but the same was not paid on the date of retrenchment.

6. Assailing the order of the Labour Court, Shri Sangarsh Pandey, learned Dy. Govt. Advocate appearing for the petitioners/State, would submit that merely because some other daily wager in a different division or the department was continued in service, the plea of violation of Section 25 H of the ID Act is not available because in the entire State daily wagers are engaged depending upon the availability of work in a particular period, therefore, retaining a daily wager working in some division or office of the Department is no ground to invoke the provisions of Section 25 H of the ID Act. He would further submit that once retrenchment compensation is paid, merely for the reason that the same was not paid on the date of retrenchment would not make any difference. Learned counsel would strenuously argue that the workmen having worked during May, 1992; June, 1989 & June, 1998 to February, 2000, ends of justice would be served if monetary compensation is paid in lieu of reinstatement.
7. Relying on the orders passed by this Court in several of its earlier cases in the matters of **Municipal Council, Birgaon vs. Manoj Verma** (W.P.(L) No.9/2013, decided on 28th October, 2013) and **State of Chhattisgarh and another v. Dhaniram** (W.P.(L)

No.3034 of 2009, decided on 02.02.2011) as also on the principles laid down by the Supreme Court in **Hari Nandan Prasad and another vs. Employer I/R to Management of Food Corporation of India and another** (2014) 7 SCC 190 and **Bhuvnesh Kumar Dwivedi vs. Hindalco Industries Limited** (2014) 11 SCC 85, learned counsel for the State would submit that in the case in hand, the Labour Court ought not to have directed for reinstatement, because, payment of compensation in lieu of reinstatement would serve the ends of justice.

8. Per contra, Shri Sudeep Johri, learned counsel appearing for the respondent workmen, would argue that the respective workmen having worked for more than 240 days in the just preceding calendar year, the retrenchment has rightly been held illegal and once this finding is recorded the reinstatement in service is the appropriate relief to be granted in favour of the workmen.
9. Learned counsel would place reliance upon the decisions rendered in **Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda** 2010 (1) SCC 47; **M/s Oswal Agro Furane Ltd. and Another v. Oswal Agro Furane Workers Union and Others** 2005 Lab.I.C. 1325; and **Gammon India Limited v. Niranjan Dass** 1983 Lab.I.C. 1865. Shri Johri would particularly argue that the provisions contained under Sections 25 G and 25 H of the ID Act are squarely attracted in the present cases, therefore,

there is no illegality in the impugned awards and all the writ petitions deserve to be dismissed.

10. 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 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 Seal*, 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.

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.

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.”

(Emphasis supplied)

11. The principle is thus well settled. When removal of a workman is set aside by the Labour Court on the ground that the daily wage workman has been illegally retrenched in violation of the provisions contained in Section 25 F of the Industrial Disputes Act, the question as to whether the relief of reinstatement is automatic or payment of compensation in lieu of reinstatement would serve the ends of justice would depend on several factors like nature of job in which the workmen were engaged, duration of their engagement, the delay in raising Industrial Dispute, time period which has elapsed from the date of termination etc.
12. The identical issue has already been considered and decided by this Court in **State of Chhattisgarh & Ors. v. Sukhpal Singh & Anr.** {WP (L) No.168/2013 decided on 10-12-2013}, referred to

above, and instead of reinstatement, monetary compensation has been awarded. The said decision has been confirmed by the Division Bench of this Court in **Sukhpal Singh v. State of Chhattisgarh & Ors.** {WA No.68/2014, decided on 14.2.2014} and even the same has also been affirmed by the Supreme Court in **Sukhpal Sinngh etc. v. State of Chhattisgarh & Ors.** {SLP(Civil) No.25153-25154 of 2015, decided on 24-8-2015}.

13. In the present batch of cases, the following chart would demonstrate the length of service before retrenchment, the year of reference and the date of award in each of the writ petition :

| WPL No. | Parties Name                    | Length of service as daily wager before retrenchment<br><br>(as mentioned in 2nd para of the award) | Year of Reference | Date of award |
|---------|---------------------------------|-----------------------------------------------------------------------------------------------------|-------------------|---------------|
| 173/13  | State v. Shiv Kumar Chandrakar  | 1992 to 2000<br><br>(less than 10 years)                                                            | 2004              | 20-5-13       |
| 174/13  | State v. Rajendra Chandrakar    | 1989 to 2000<br><br>(more than 10 years)                                                            | 2004              | 21-5-13       |
| 175/13  | State v. Sewan Kumar Chandrakar | 1998 to 2000<br><br>(less than 10 years)                                                            | 2004              | 22-5-13       |

14. To apply the principles or the tests propounded by the Supreme Court in **Hari Nandan Prasad** (supra) as also in view of the affirmation by the Supreme Court of the order passed by this Court in **Sukhpal Singh** (supra), this Court has given anxious consideration to evolve the common criteria for application in all the cases so that it may not appear that this Court has randomly picked up the writ petitions preferred by the State for allowing the same against the workmen or for dismissing the same in favour of the workmen.
15. Having, thus, considered it appears, service rendered by a daily wager for a period of 10 years or more would be a reasonable criteria for holding that in such cases monetary compensation in lieu of reinstatement may not be justified, as it may defeat the ends of justice.
16. The criteria of 10 years is adopted because the same length of service has been considered by the Supreme Court in **Secretary, State of Karnataka and Others v. Umadevi (3) and Others** (2006) 4 SCC 1 for directing the State Governments to frame scheme for regularization as one time measure.
17. For the foregoing, WPL No.174 of 2013, where the workman has rendered service for a period of more than 10 years, preferred by the State deserves to be dismissed and in other two cases where the daily wagers have worked for less than 10 years, the said writ

petitions are allowed in part. In such cases, this Court modified the impugned award and granted monetary compensation to the workmen in lieu of reinstatement.

18. In view of the above :

- WPL Nos.173 of 2013 & 175 of 2013 are allowed in part. Instead of order of reinstatement, the impugned award is modified to the extent that the petitioner-State shall pay a sum of Rs.1,50,000/- to each of the workman in these two writ petitions.
- WPL No.174 of 2013 fails and the order of reinstatement passed by the Labour Court is upheld.

18. There shall be no order as to costs.

Sd/-  
**Judge**  
(Prashant Kumar Mishra)

Gowri