

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 63 of 2013

1. State Of Chhattisgarh Through the Secretary, Deptt Of Water Resources, DKS Bhawan, Mantralaya, 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. The Executive Engineer Water Resources Tandula Division, Durg, Dist Durg (C.G.)
3. The Sub Divisional Officer Water Resources, Sub Division Dhamdha, Distt Durg (C.G.)

---- Petitioners

Versus

1. Dev Kumar . S/o Shri Laxminath Kaushal
2. Bhojram S/o Makhan Janghel
3. Narad S/o Muni Janghel
4. Surshyam S/o Sadhu Dewangan
5. Lalchand S/o Johan Dewangan
6. Santu S/o Shobha Sahu
7. Mahendra Kumar S/o Ganesh Sahu
8. Manharan S/o Kunjlal Janghel
9. Pankaj S/o Lilu Janghel
10. Harishchandra S/o Vishnu Janghel
11. Ramkumar S/o Beniram Janghel
12. Tirath Kumar S/o Dilip Kumar Janghel
13. Akalu S/o Pardeshi Gond
14. Bala S/o Balwant Janghel
15. Nand Kumar S/o Ballar Janghel

- 16. Shivkumar S/o Sudama Janghel
- 17. Santosh S/o Raga Janghel
- 18. Khemu S/o Ishawar Sahu
- 19. Devlal S/o Ishwar Sahu
- 20. Gajadhar S/o Prahlad Janghel
- 21. Goverdhan S/o Rajaram Nirmalkar
- 22. Jitendra Verma S/o Dudhe Verma
- 23. Amar Lal S/o Muniram Janghel

Age and other details of the respondents is not mentioned in the memo of claim and in the award, therefore not mentioned

All are resident of Village Sahlekhurd, Post Rounda, Tahsil Dhamdha, P.S. Dhamdha District Durg (C.G.)

---- Respondents

For Petitioners/State
For Respondents

Mr. Y.S. Thakur, Dy. A.G.
Mr. Shikhar Sharma, Advocate .

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

10/9/2015

Heard finally with the consent of learned counsel for the parties.

2. This writ petition has been preferred by the State of Chattisgarh assailing the legality and validity of the award passed by the Labour Court, Durg reinstating the workmen in the service upon holding that their termination/disengagement was contrary to the principles enshrined under Section 25-F of the Industrial Disputes Act (in short "the I.D. Act").

3. Facts of the case in short is that respondents/workmen were

working as Daily wage labourers under the Department of Water Resources since 1995. The workmen were retrenched on 30.06.2006 without issuing any show cause notice or without making payment of any retrenchment compensation. The workmen raised industrial disputes before the Labour Commissioner, Raipur. The said Labour Officer referred the disputes for adjudication under the I.D. Act to the Labour Court, Durg in April 2010.

4. Before the Labour Court, the workmen examined themselves in support of their claim for reinstatement, whereas, the Department of Water Resources denied the claim and submitted that the Department of Water Resources is engaged in its activity as per the requirement of the Department. It was stated that the Department has not committed any illegality by removing the workmen as they have no right to hold the post.

5. The Labour Court, in its impugned award, has found that the workmen have proved that they were engaged in the year 1995 and have worked for a continuous period of 240 days, immediately preceding the date of their removal from service and further that they have not been paid any retrenchment compensation at the time of their removal.

6. Nothing has been placed before this Court to attack the said finding of the Labour Court or to submit that there is misreading of evidence or any perversity in recording the findings. Thus, the fact that the workmen had worked for a period of about 12 years, prior to removal, is fully established. It is also to be seen that the workmen were removed on 30.06.2006 and thereafter, they have raised the Industrial Dispute.

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 the matters of **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, Mr. Y.S. Thakur, learned Dy. A.G. for the State, submits 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, Mr. Shikhar Sharma, learned counsel for the respondent-workmen, would submit that the present case is different from those cases, wherein, this Court has ordered for payment of compensation in lieu of reinstatement. He would further submit that the concerned workmen having worked for about 12 years before their removal, they are entitled for reinstatement and the writ petition deserves to be dismissed.

9. 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 Seall*, (2010) 6 SCC 773, 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.”

10. In Bhuvnesh Kumar Dwivedi (supra), the Supreme Court was considering the appeal preferred by the workman in whose favour the Labour Court had passed an award directing his reinstatement with back wages. The High Court had set-aside the award and directed for payment of compensation of Rs.1 lakh. The Supreme Court considering its earlier decision in the matter of Harjinder Singh v. Punjab State Warehousing Corporation, **AIR 2010 SC 1116**, held that the order of reinstatement was justified.

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 the Industrial Dispute, time period which has elapsed from the date of termination etc.

12. Applying the said principles and considering the same in the obtaining facts of the case in hand, it would appear that the workmen had worked for about 12 years prior to their removal. They had raised the Industrial Dispute and on the basis of the same, the

reference was made by the appropriate government. The matter did not remain pending before the Labour Court for years together.

13. It is apt to refer that in the meanwhile, the State Government has issued a Circular on 05.03.2008 directing regularization of all such daily wagers who were engaged in service during the period from 01.01.1989 to 31.12.1997. In the event the concerned workmen were not illegally retrenched, they would have become entitled for regularization in terms of Circular dated 05.03.2008. Therefore, the question arises as to whether in the given set of facts payment of compensation in lieu of reinstatement would serve the ends of justice or would in fact, defeat the ends of justice.

14. Having given anxious thought to the issue and considering the principles laid down by the Supreme Court, this Court is of the considered opinion that denying the relief of reinstatement would defeat the ends of justice and would perpetuate the illegality committed by the concerned department's officer, who removed the workmen in violation of the provisions contained in Section 25-F of the Act, 1947. The workmen having put about 12 years of service, refusal to reinstate them would amount to denial of such relief, for which, they are entitled in law.

15. Accordingly, the writ petition fails and the order of reinstatement passed by the Labour Court is upheld.

16. Consequently, the writ petition is dismissed.

Sd/-

Judge

(Prashant Kumar Mishra)

