

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 429 of 2015

Ramakant Sahu S/o Shri Motila Sahu, Aged About 49 Years R/o Village Marod, P.O. And P.S. Marod, Tahsil Dhamtari, District Raipur Chhattisgarh

---- Appellant

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

And

Writ Appeal No. 417 of 2015

Mahesh Kumar Manikpuri S/o Shri Jagoot Das Manikpuri, Aged About 45 Years R/o. Bhanpuri, Post Birgaon, Thana Khamtarai, District Raipur (Chhattisgarh)

----Appellant

Vs

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 Appellants:

Shri Vijay Kumar Sahu, Advocate.

For Respondent:

None.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment On Board

Per Navin Sinha, Chief Justice

21/09/2015

1. The two appeals arise from separate orders both dated 23.6.2015.

There is a marked similarity on facts and the questions of law involved are

common. They have therefore been heard together and are being disposed by a common order.

2. The appeals are barred by delay of 23 and 18 days respectively.

3. The Learned Single Judge declined to interfere with the award of the Central Government Industrial Tribunal (hereinafter called 'the Tribunal') holding the retrenchment of the Appellants to be bad for non-compliance with Section 25F of the Industrial Disputes Act (hereinafter called 'the Act') granting compensation of Rs.50,000/- and litigation cost of Rs.5000/- but declining reinstatement.

4. Learned Counsel for the Appellants submitted that once the retrenchment was found to be illegal for non-compliance with the statutory requirements of Section 25F of the Act, reinstatement ought to have been consequentially ordered. Alternately, it was submitted that the compensation awarded was too meager in amount. The Tribunal has granted compensation treating the Appellants to be validly appointed employees.

5. Reliance was placed on 2015 (5) SCALE 275 (Gauri Shanker vs. State of Rajasthan) and (2015) 4 Supreme Court Cases 544 (Mackinnon Mackenzie & Company Limited vs. Mackinnon Employees Union) in support of the submission that even if the employee concerned was on daily wage and fulfilled stipulations provided under the law, the retrenchment thereafter was contrary to the Act, reinstatement follows automatically.

6. We have considered the submissions on behalf of the Appellants.

7. The Appellants were appointed as temporary Messengers for 89 days in the year 1986-87 and were again engaged in the same capacity

from 13.3.1990 till 29.6.1991. The Learned Single Judge, considering the very short duration for which the Appellants had worked, the nature of their engagement, the long passage of time since retrenchment, declined to interfere either by directing reinstatement or enhancing the compensation. The reference under Section 10 of the Industrial Dispute Act read as follows:-

“Whether the action of the management of Bilaspur-Raipur Kshetriya Gramin Bank in terminating the services of Shri Mahesh Kumar Manikpuri w.e.f 30.6.91 and not considering him for further employment while recruiting fresh hands is justified? If not, to what relief the workman is entitled to”

8. The reference was not with regard to retrenchment ordered in violation of Section 25F of the Act or wrongful removal from service. Essentially the Appellants were aggrieved by the failure of the Respondents to continue to retain them in service despite availability of vacancies. It was the case of the Appellants themselves that after their termination, the Respondent Bank had not engaged any other persons as messengers and that 60 posts of messengers were lying vacant. The relief primarily sought was for a direction to retain them in service only. Even if vacancies existed, there was no vested right in the Appellants to claim continuance on that ground given the nature of their engagement. Despite availability of vacancies the management may opine that there was no need to fill the vacancies as there was no need for personnel. There are no allegations of *mala fides*, violation of “last come first go” or that juniors have been retained in service. The management *inter alia* also took the objection that the very appointment of the Appellants was illegal and names had not even been called from the Employment Exchange. The Appellants did not deny it and led no evidence in rebuttal.

9. The Tribunal returned the finding that the Appellants had not been appointed in accordance with law and no recruitment process had been followed. The appointment of the Appellants was thus held to be contrary to the mandate of Articles 14 and 16 of the Constitution. This finding was not challenged by the Appellants in the writ petition and thus attained finality. The attention of the Learned Single Judge does not appear to have been invited to the same. Compensation was yet granted by the Tribunal for procedural non-compliance with Section 25F of the Act. In absence of any challenge by the Respondents to the grant of compensation notwithstanding the finding of an illegal appointment we are not required to examine the same.

10. The Learned Single Judge relied upon (2014) 7 SCC 190 (Harinandan Prasad v. Food Corporation of India) to uphold the order of the Tribunal declining reinstatement and ordering compensation keeping in mind the extremely short duration for which the Appellants had worked and the long passage of time that they had remained out of service. In (2009) 15 SCC 327 (Jagbir Singh v. Haryana State Agriculture Mktg. Board) it was observed :-

“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.”

11. If the Appellants had been appointed even on daily wages without following any procedure or process and in teeth of Article 14 of the Constitution of India, directing reinstatement would amount to giving them an advantage on basis of what was a patently illegal appointment. They had not even completed ten years in service if it be relevant. The relevance of an appointment made in accordance with law before directing reinstatement was required to be considered by the Labour Court fell for consideration in (2008) 4 SCC 261 (GDA v. Ashok Kumar). Holding that compensation would suffice in such cases it was observed as follows :-

“19. A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said constitutional scheme as also the statutory recruitment rules, if any, would be void. These facts were required to be kept in mind by the Labour Court before passing an award of reinstatement.

20. Furthermore, public interest would not be subserved if after such a long lapse of time, the first respondent is directed to be reinstated in service.

21. We are, therefore, of the opinion that the appellant should be directed to pay compensation to the first respondent in stead and in place of the relief of reinstatement in service.”

12. Similarly in (2003) 8 SCC 248 (Haryana Tourism Corpn. Ltd. v. Fakir Chand awarding compensation only it was held :-

“4. The respondents herein were engaged to work on daily-wage basis. They were not recruited through the employment exchange or through any other accepted mode of selection. It is also not known whether there was any advertisement calling for applications for appointment of these respondents.”

13. The reference was not if the retrenchment was in violation of Section 25F of the Act. The reference was whether declining to keep the Appellants in further employment even while recruiting fresh hands after their removal was justified. The Appellants led no evidence with regard to recruitment of any fresh hands after their removal. On the contrary the evidence led was of existing vacancies and which were not being filled up. Whether to fill up a vacancy is not is the prerogative of the employer depending on its needs. Even a writ Court cannot issue a mandamus simpliciter to that effect. The Appellants in essence were seeking a direction for regularization by camouflage. In (2014) 7 SCC 177 (BSNL v. Bhurumal) it was observed :-

“31. In *Deptt. of Telecommunications vs. Keshab Deb* the Court emphasised that automatic direction for reinstatement of the workman with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed year of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularised in service or granted/given a temporary status. Such a scheme has been held to be unconstitutional by this Court in *A. Umarani v. Registrar, Coop. Societies and state of Karnataka v. Umadevi*.”

“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. 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 in as much 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.”

14. An exception was however carved out which has no application in the facts of the present case observing as follows :-

“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.”

15. We have applied our mind to Gauri Shanker (supra) and Mackinon Mackenzie (supra) relied upon by the Appellants and are of the considered opinion that in the facts of the present case, the two decisions are not applicable.

16. In the present case, the Appellants had worked for an extremely short duration. In Gauri Shanker, the Appellant had worked from 1.1.1987 to 1.4.1992. The Respondents had sought to conceal the evidence on basis of which Section 25F was required to be followed. There was no issue involved with regard to an illegal appointment void *ab initio*.

17. Similarly, in Mackinon Mackenzie (supra) the issue on basis of which relief came to be ultimately granted was that the principle of last come first go had not been followed, returning a finding that the seniority list had also been violated concluding *mala fides*. Again the issue of an illegal appointment did not arise. It was in those peculiar circumstances

that relief came to be granted and which falls squarely within the exception noticed in paragraph-35 of Bhurumal (supra).

18. Considering the nature of the engagement, and the reference as made, we find no reason to interfere with the Award or the order of the Learned Single Judge.

19. Considering the duration of delay in both appeals it is condoned and the appeals are dismissed as devoid of merits.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE