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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Appeal No. 568 of 2015**

Satish Kumar Pathak S/o Shri G. P. Pathak, Aged About 48 Years R/o Irrigation Colony, Darri, Teh. & District Korba (Chhattisgarh)

**---- Petitioner****versus**

1. State of Chhattisgarh Through The Executive Engineer, Hasdeo Barrage, Water Resources Division, Rampur, Tehsil and District Korba (Chhattisgarh)
2. Sub Divisional Officer, Division No. 2 (153) Hasdeo Left Side Canal, Water Resources Sub Division, Rampur, Teh & District Korba (Chhattisgarh).

**---- Respondents****Writ Appeal No. 569 of 2015**

Dhaniram S/o Shri Laxman, Aged About 49 Years R/o Barpali, Tehsil Kartala, District Korba, (Chhattisgarh)

**---- Petitioner****versus**

1. State of Chhattisgarh Through The Executive Engineer, Hasdeo Barrage, Water Resources Division, Rampur, Korba, Teh. & District Korba, (Chhattisgarh)
2. Sub Divisional Officer, Hasdeo Left Side Canal Division No. 03, Barpali, District Korba, (Chhattisgarh)

**---- Respondents****Writ Appeal No. 570 of 2015**

Sandeep Kumar S/o Shri Ramesh Prasad, Aged About 49 Years R/o Barpali, Tahsil Kartala, District Korba, (Chhattisgarh)

**---- Petitioner****versus**

1. State of Chhattisgarh Through The Executive Engineer, Hasdeo Barrage, Water Resources Division, Rampur, Korba, Tah. & District Korba, (Chhattisgarh)
2. Sub Divisional Officer, Hasdeo Left Side Canal Division No. 03, Barpali, District Korba, (Chhattisgarh)

**---- Respondents****Writ Appeal No. 574 of 2015**

Karishna Kumar Kashyap S/o Vyasnarayan Kashyap Aged About 42 Years R/o Village Mudpar, P.O. Khisora (Semar), P. S. & Tahsil Nawagarh, District Janjgir Champa (Chhattisgarh)

**---- Petitioner****versus**

1. State of Chhattisgarh Through The Secretary, Department of Water Resources, D. K. S. Bhawan, Mantralay Raipur (Chhattisgarh) Now Mahanadi Bhawan, Mantralay, Naya Raipur (Chhattisgarh)
2. Anuvibhagiya Adhikari, Hasdeo Sub Minor Upsambhag Kramank 4 Nawagarh, District Janjgir Champa (Chhattisgarh)

**---- Respondents**

**Writ Appeal No. 575 of 2015**

Maal Kumar Kashyap S/o Badri Prasad Kashyap, Aged About 49 Years  
R/o Village Mudpar, P.O. Khisora, P. S. & Tahsil Nawagarh, District  
Janjgir Champa (Chhattisgarh)

---- **Petitioner**

**versus**

1. State of Chhattisgarh Through The Secretary, Department of Water Resources, D. K. S. Bhawan, Mantralay Raipur (Chhattisgarh) Now Mahanadi Bhawan, Mantralay, Naya Raipur (Chhattisgarh)
2. Executive Engineer, Hasdeo Nahar Jal Prabandh Sambhag, Janjgir, Tehsil Janjgir, District Janjgir Champa (Chhattisgarh)

---- **Respondents**

**and**

**Writ Appeal No. 578 of 2015**

Jeetram Sahu S/o Bedram Sahu, Aged About 52 Years R/o Village  
Mudpar, P.O. Khisora, P.S. & Tahsil Nawagarh, District Janjgir Champa  
Chhattisgarh

---- **Petitioner**

**versus**

1. State of Chhattisgarh Through The Secretary, Department of Water Resources, D.K.S. Bhawan, Mantralyaa, Raipur Chhattisgarh
2. Anuvibhagiya Adhikari, Hasdeo Sub Minor Upsambhag, Karmank 4 Nawagarh, District Janjgir Champa Chhattisgarh

-- **Respondents**

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|-----------------------|---|-----------------------------------|
| For Appellants        | : | Shri Vinod Deshmukh, Advocate     |
| For Respondents/State | : | Shri UNS Deo, Government Advocate |

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**Hon'ble Shri Navin Sinha, Chief Justice**  
**Hon'ble Shri Justice P. Sam Koshy**

**Judgment on Board**

**Per Navin Sinha, Chief Justice**

**27/11/2015**

1. This batch of six appeals arise from a common order dated 14.10.2015. The Learned Single Judge declined to interfere with the order of reinstatement by the Labour Court pursuant to retrenchment in violation of Section 25F of the Industrial Disputes Act, 1947 (hereinafter called 'the Act') with regard to daily wagers who had worked in that capacity for ten years or more. But with regard to those who had worked lesser than that period the Award was modified by grant of Rs.25,000/- as compensation for every completed year of service before retrenchment in lie of reinstatement.

2. The present Appellants have worked for periods ranging from four to six years, falling in the latter category and thus the appeals. Since the facts and the questions of law arising for consideration are common, the appeals have been heard together and are being disposed by a common order.

3. Learned Counsel for the Appellants submits that all daily wagers who had completed 240 days formed a class. The Labour Court held the termination to be bad in absence of compliance with Section 25 F of the Act and directed reinstatement as daily wage. There can be no sub-classification amongst persons who formed a class protected by statutory provisions. The mini classification done in exercise of judicial review has no rationale or nexus with the object to be achieved by denying reinstatement as ordered for statutory non-compliance. (2006) 4 SCC 1 (Secretary, State of Karnataka v. Umadevi) has no application to the facts of the present case. The ten years criteria laid down therefore for regularization was not relevant. The order of the Labour Court was not found to be defective or erroneous in any other manner. In judicial review the Learned Single Judge could not have rewritten the Award for which reliance was placed on (2014) 11 SCC 85 (Bhuvnesh Kumar Dwivedi v. Hindalco Industries Limited). Reliance was further placed on (2010) 5 SCC 497 (Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat (Haryana) in support of the discrimination between similarly situated retrenched persons. After the Award, the Appellants had been reinstated unconditionally by the Respondents as far back as 2011, a fact not noticed by the Learned Single Judge.

4. Learned Counsel for the State opposing the appeals, submitted that mere compliance with the order did not prevent the State from challenging it. The Learned Single Judge has made a valid classification between those who had put in more than ten years of service or less to differentiate for

granting reinstatement. It cannot be said that the classification has been done without justification. While directing compensation in lieu of reinstatement, the Learned Single Judge, *inter alia*, has also referred to the order dated 14.2.2014 in Writ Appeal No.68 of 2014 (Sukhpal Singh v. State of Chhattisgarh) affirmed by the Supreme Court in Special Leave Petition (Civil) No.14966-14967 of 2015 dated 24.8.2015 and (2014) 7 SCC 190 (Hari Nandan Prasad v. Food Corporation of India).

5. We have considered the submissions on behalf of the parties. The recent trend of judicial decisions that even if a daily wager was retrenched in violation of the provisions of Section 25F of the Act, reinstatement should not be ordered automatically as discussed by the Learned Single Judge including Sukhpal Singh (*supra*) and Hari Nandan Prasad (*supra*) need not detain the discussions as the proposition stands well established. But, equally both the cases did not relate to the issue of discrimination between one class of persons terminated in violation of Section 25F of the Act, having completed 240 days.

6. Equally, there are exceptions to the principle regarding reinstatement and much would depend on the facts and circumstances of each case. All daily wagers retrenched in violation of the provisions of Section 25F of the Act form a class. The retrenchment, if it is found to be vitiated by non-compliance of statutory provisions, the taint attaches across to all similarly situated and in our opinion, no classification could have been made for the purpose of reinstatement based on the principle of years of service when no such contention had been raised on behalf of the Respondents either before the Tribunal or in challenge before the Learned Single Judge. The Tribunal had directed reinstatement with regard to all. If classification had been made for purposes of compensation while declining reinstatement to all as held in (2014) 16 SCC 440 (Bharat Sanchar Nigam Limited v. Kailash Narayan

Sharma), which also follows the principle that reinstatement in such cases was not automatic, matters would have been entirely different. In this regard, we may only notice the following observations :-

“7. In the present cases, as stated earlier, some of the respondents have worked for periods spread over two to seven years or little over seven years intermittently on daily wages. Their terminations have taken place long back. In the facts and circumstances of the present case, we are of the opinion that a compensation of Rs.50,000 to those respondents who have worked for a period spread over two years shall meet the ends of justice. Those respondents who have worked for a period spread over more than two years and up to five years shall be entitled for compensation of Rs.75,000. Such of the respondents who have worked for a period spread over more than five years and up to seven years shall be entitled for compensation of Rs.1,00,000. Those respondents who have worked for a period spread over more than seven years shall be entitled for compensation of Rs.1,50,000.”

7. The Learned Single Judge declined to interfere with the Award for reinstatement of persons who had put in ten years of service before retrenchment as there was no other procedural infirmity in the Award. The classification based on the principles in *Umadevi (supra)* dealing with regularisation in service subject to pre-conditions as discussed therein, in our considered opinion, has no application to the facts of the case. Reinstatement for retrenchment in violation of the provisions of Section 25F of the Act and the right to regularisation of such persons are completely distinguishable issues. The Tribunal had not ordered their regularization after reinstatement as was done in *Hari Nandan Prasad (supra)*. Further, it does not appear having been brought to the attention of the Learned Single Judge that the Appellants had been reinstated unconditionally pursuant to the Award, four years earlier itself. The mini classification made by the Learned Single Judge between all those terminated in violation of Section 25F of the Act was not based on any rationale intelligible differentia having any object to be achieved based on years of service as the illegality lay in

retrenchment contrary to law of those who had all completed 240 days in service.

**8.** In Anoop Sharma (supra), discrimination in reinstatement between persons retrenched in violation of Section 25 F of the Act was not approved.

**9.** The jurisdiction under Article 226 of the Constitution of India in examining the correctness of the order of the Labour Court was confined to errors in the decision making process and not on the merits of the decision itself. The Learned Single Judge did not find any infirmity in the decision making process warranting interference.

**10.** In Bhuvnesh Kumar Dwivedi (supra) also arising out of an industrial dispute, it was observed as follows:

“22. A careful reading of the judgments reveals that the High Court can interfere with an order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer Point (i) in favour of the appellant.”

In absence of any finding of illegality or irregularity in the order of the Tribunal, in our considered opinion, the Learned Single Judge ought not to have interfered with the Award and bifurcated the same in exercise of judicial review resulting in discrimination without justification.

**11.** In Hari Nandan Prasad (supra), the Tribunal had directed reinstatement of two daily wage with 50% back wages along with regularization. Relief was granted to one of the Appellants only as he had completed 240 days before the Circular dated 6.5.1987 came into force

while the other stood retrenched before the same. With regard to the issue of discrimination as presently it was observed :-

“39.....However, wherever it is found that similarly situated workmen are regularised by the employer itself under some scheme or otherwise and the workmen in question who have approached the Industrial/Labour Court are on a par with them, direction of regularisation in such cases may be legally justified, otherwise, non-regularisation of the left-over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Article 14 of the Constitution. Thus, the industrial adjudicator would be achieving the equality by upholding Article 14, rather than violating this constitutional provision.”

**12.** The benefit of the present order has to be confined to the Appellants alone.

**13.** The order under appeal is set aside. The Appellants are held entitled to reinstatement ordered by the Labour Court. The appeals are allowed

Sd/-  
**(Navin Sinha)**  
**CHIEF JUSTICE**

Sd/-  
**(P. Sam Koshy)**  
**JUDGE**