

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO. 9 OF 2015

IN

WRIT PETITION NO. 3473 OF 2011 (D)

Telecom District Engineer, Akola and another

-vs-

V. K. Sule and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. R.S. Sundaram, counsel for the petitioners.

Mr. A. S. Kilor, counsel for the respondents.

CORAM : SMT.VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 06.08.2015.

By this letters patent appeal, the judgment of the learned Single Judge, dated 19/06/2012 in Writ Petition No.3473 of 2011 is appealed against.

Few facts giving rise to the letters patent appeal are stated thus –

The respondent No.1-employee had worked on daily wages with the Telecom District Engineer for about six years, when the services of the respondent No.1 were terminated on the ground that the respondent No.1 had disobeyed the superiors and abused them. A reference in relation to the order of termination was made to the Central Government Industrial Tribunal on 19/04/1991 and the C.G.I.T., by an award dated 13/12/2010, directed the appellants to reinstate the respondent No.1 on his original post with 20% back wages from 01/10/1989 till the date of his joining. The order of the C.G.I.T. was challenged by the appellants in Writ Petition No.3473 of 2011. The learned Single Judge, by the order dated 19/06/2012, dismissed the writ petition

filed by the appellants and upheld the order of the C.G.I.T. directing the reinstatement of the respondent No.1-workman in view of the violation of the provisions of Section 25F of the Industrial Disputes Act. The order granting 20% back wages was also confirmed.

Shri Sundaram, the learned counsel for the appellants, submitted that in the circumstances of the case, the Tribunal was not justified in directing the reinstatement of the respondent No.1 with 20% back wages. It is submitted that the respondent No.1 had worked on daily wages with the appellants only for a period of six years and thereafter he was out of service for more than 25 years. It is submitted that it is well settled that in such circumstances, grant of compensation in lieu of reinstatement and back wages would be proper. It is stated that the Hon'ble Supreme Court has held in several judgments that in the circumstances like the one in hand, reinstatement and back wages should not be ordered as public interest would not be sub-served, if an employee is reinstated after a long lapse of time. It is stated that in the case in hand, the respondent No.1 was merely a daily wager, but since his services were terminated on the ground that he had abused his superiors, the order is held to be bad, as an enquiry was not conducted against him. The learned counsel relied on the judgments of the Hon'ble Supreme court, reported in (2007) 9 SCC 353 (Uttaranchal Forest Development Corpn. v. M. C. Joshi), (2009) 15 SCC 327 (Jagbir Singh v. Haryana State Agriculture Mktg.Board), (2006) 1 SCC 479 (U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey), (2006) 11 SCC 684 (Jaipur Development Authority v. Ramsahai), (2008) 1 SCC 575 (Mahboob Deepak v. Nagar Panchayat, Gajraula) and (2008) 4 SCC 261 (Ghaziabad Development Authority v. Ashok Kumar) to substantiate his submission.

Shri Kilor, the learned counsel for the respondent No.1-employee, supported the order of the Tribunal and submitted that

the Tribunal was justified in directing the reinstatement of the respondent No.1 with 20% back wages. It is submitted that there was a clear violation of the provisions of Section 25F of the Industrial Disputes Act and the Tribunal had, therefore, rightly directed the appellants to reinstate the respondent No.1 in service with 20% back wages. It is submitted that though there was no stay in the letters patent appeal, the appellants have not reinstated the respondent No.1, thereby depriving him of his wages. It is lastly submitted that in case, this Court is inclined to direct the appellants to pay compensation, the compensation should be substantial, as the respondent No.1 has lost several years of his service in view of the wrongful removal.

On hearing the learned counsel for the parties and on a perusal of the judgments rendered by the Hon'ble Supreme Court and referred to herein above, it appears that ends of justice could be met, if the appellants are directed to pay compensation to the respondent No.1 in lieu of reinstatement and back wages. Admittedly, the respondent No.1 had worked only for a period of six years as a daily wager with the appellants and he was removed on the allegation that he had abused his superiors. No doubt, an enquiry was not conducted against the respondent No.1 and the provisions of Section 25F of the Industrial Disputes Act were also not complied with. The C.G.I.T. was, therefore, justified in holding that the action of the appellants was bad-in-law. The question is whether the respondent-employee was entitled to reinstatement with part of back wages or whether he was entitled to compensation in lieu of reinstatement and back wages. In the aforesaid reported decisions of the Hon'ble Supreme Court, in almost similar set of facts the Hon'ble Supreme Court had directed the employees to pay compensation to the workman in lieu of reinstatement and back wages. In the facts of the case, specially when the respondent No.1 had worked only for a period for six years as a daily wager, he cannot be thrust on the appellants after a

period of more than 25 years. In our view, the ends of justice could be met, if the respondent No.1 is compensated in lieu of reinstatement and back wages. Unfortunately, the decisions of the Hon'ble Supreme Court were not pointed out to either the C.G.I.T. or the learned Single Judge. In the circumstances of the case, it would be necessary to direct the appellants to pay a sum of Rs.1,50,000/- to the respondent-employee towards compensation in lieu of reinstatement and back wages.

Hence, for the reasons aforesaid, the letters patent appeal is partly allowed. The order of the Central Government Industrial Tribunal and the learned Single Judge are hereby modified. The appellants are directed to pay a sum of Rs.1,50,000/- to the respondent No.1-employee in lieu of reinstatement and back wages within a period of six weeks. In the circumstances of the case, there would be no order as to costs.

JUDGE

JUDGE