

**HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY**

**Writ Petition No. 14322 of 2002**

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**ORDER :**  
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This writ petition is filed against the Award of the Labour Court, Guntur-first respondent dated 27.08.2001 in I.D.No.46 of 1999, whereby the Labour Court passed an order of reinstatement of the respondents herein into service with full back wages and continuity of service.

2. Sri A.K.Jayaprakash Rao, learned Senior Counsel submits that the order of reinstatement by the first respondent is not automatic in view of Section 25-F of the Industrial Disputes Act, 1947. In appropriate cases where the employment is on casual basis, appropriate compensation can be awarded. But without considering the same, the first respondent ordered reinstatement. In support of his contention, he relied on the judgment in W.A.Nos.827, 1036 and 1062 of 2010 dated 27.09.2013.

3. On the other hand, learned counsel appearing for the respondents 2 to 9, submits that the first respondent-Labour Court has considered the issue in proper perspective and ordered reinstatement into service and no interference is called for. He also submits that interference with the Award of the Labour Court is very limited while exercising power of judicial review under Article 226 of the Constitution of India.

4. This Court, while rendering judgment in W.A.Nos.827, 1036 and 1062 of 2010 dated 27.09.2013, relied on the judgment of Apex Court reported in **Bharat Sanchar Nigam Limited v. Man Singh**<sup>[1]</sup> held that although an order of retrenchment passed in violation of Section 25-F of the ID Act is set aside, but an Award of reinstatement into service should not be as a matter of course and clearly distinguished between a daily wager and permanent employee. It was held that if a workman

was engaged on daily wage basis and they had merely worked for more than 240 days, granting of appropriate compensation by setting aside the reinstatement is legitimate and would meet the ends of justice.

**In Assistant Engineer, Rajasthan Development Corporation v. Gitam Singh (Civil Appeal No.8415 of 2009)**, the Hon'ble Apex Court observed that the Labour Court has to keep in view all the relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been ordered and the delay in raising the industrial dispute before grant of relief in an Industrial Dispute etc and held that granting of monetary compensation would meet the ends of justice.

In the similar and identical circumstances, the Apex Court in the **Asst.Engineer, Rajasthan Dev.Corporation Vs. Gitam Singh {JT2013(2)SC231}**, held as under:

“In our view, Harjinder Singh : (2010) 3 SCC 192 and Devinder Singh : (2011) 6 SCC 584 do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This Court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a daily wager, who had worked for a short period, this Court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside and the delay in raising the industrial dispute before grant of relief in an industrial dispute.

We may also refer to a recent decision of this Court in **Bharat Sanchar Nigam Limited v. Man Singh** : (2012) 1 SCC 558. That was a case where the workmen, who were daily wagers during the year 1984-85, were terminated without following Section 25-F. The industrial dispute was raised after five years and although the Labour Court had awarded reinstatement of the workmen which was not interfered by the High Court, this Court set aside the award of reinstatement and ordered payment of compensation. In paragraphs 4 and 5 (pg. 559) of the Report this Court held as under:

This Court in a catena of decisions has clearly laid down that

although an order of retrenchment passed in violation of Section 25-F of the Industrial Disputes Act may be set aside but an award of reinstatement should not be passed. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

In view of the aforementioned legal position and the fact that the Respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

In light of the above legal position and having regard to the facts of the present case, namely, the workman was engaged as daily wager on 01.03.1991 and he worked hardly for eight months from 01.03.1991 to 31.10.1991, in our view, the Labour Court failed to exercise its judicial discretion appropriately. The judicial discretion exercised by the Labour Court suffers from serious infirmity. The Single Judge as well as the Division Bench of the High Court also erred in not considering the above aspect at all. The award dated 28.06.2001 directing reinstatement of the Respondent with continuity of service and 25% back wages in the facts and circumstances of the case cannot be sustained and has to be set aside and is set aside. In our view, compensation of Rs. 50,000/- by the Appellant to the Respondent shall meet the ends of justice. We order accordingly. Such payment shall be made to the Respondent within six weeks from today failing which the same will carry interest @ 9 per cent per annum."

In the present case also, the employment of the respondents 2 to 9 is casual in nature and they have not been appointed by the Board constituted for that purpose nor any individual appointments are shown. It is to be seen that the respondents 2 to 9 were receiving wages under Section 17(v) of the Industrial Disputes Act during the pendency of the writ petition. The principles laid down in the above said decisions have been followed by this Court in W.A.Nos.827 of 2010 and batch.

Taking all these facts and circumstances into consideration, I am of the opinion that payment of monetary compensation would meet the ends of justice instead of order of reinstatement, as ordered by the first respondent-Labour Court. As such, the Award of the Labour Court dated 27.08.2001 in I.D.No.46 of 1999 is modified by directing the petitioners to pay compensation of Rs.50,000/- to each of the

respondents 2 to 9 within a period of two months from the date of receipt of a copy of this order. Since it is stated that the 7<sup>th</sup> respondent died, both the counsel agreed that the same may be paid to the legal heirs of the 7<sup>th</sup> respondent.

With the above modification, the writ petition is disposed of. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand disposed of.

27.08.2015.  
KVS

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A.RAJASHEKER REDDY, J

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

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**Date: 27-08-2015**

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